



LEGISLATIVE COUNCIL

SELECT COMMITTEE ON THE IMPACT OF TECHNOLOGICAL AND OTHER CHANGE  
ON THE FUTURE OF WORK AND WORKERS IN NEW SOUTH WALES

# Impact of technological and other change on the future of work and workers in New South Wales

Final report -  
Workplace  
surveillance and  
automation



Report 2

November 2022

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Select Committee on the Impact of Technological and Other  
Change on the Future of Work and Workers in New South  
Wales

# **Impact of technological and other change on the future of work and workers in New South Wales**

Final report - Workplace  
surveillance and automation

Ordered to be printed 8 November 2022

**New South Wales. Parliament. Legislative Council. Select Committee on the impact of technological and other change on the future of work and workers in New South Wales. Report no. 2.**

Impact of technological and other change on the future of work and workers in New South Wales:  
Final report - Workplace surveillance and automation

“November 2022”.

Chair: Hon. Daniel Mookhey MLC



A catalogue record for this  
book is available from the  
National Library of Australia

ISBN 978-1-922543-94-3

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## Terms of reference

That a select committee be established to inquire into and report on the impact of technological and other change on the future of work and workers in New South Wales, with particular reference to:

- (a) changes in the earnings, job security, employment status and working patterns of people in New South Wales,
- (b) the extent, nature and impact on both the New South Wales labour market and New South Wales economy of:
  - (i) the 'on-demand' or 'gig-economy',
  - (ii) the automation of work,
  - (iii) the different impact of (i) and (ii) on regional New South Wales,
  - (iv) the wider effects of (i) and (ii) on equality, government and society,
- (c) the impact of the 'on-demand' or 'gig economy' and the automation of work on long term productivity growth, economic growth, as well as the overall attractiveness of New South Wales as an investment destination for the advanced technological sector,
- (d) the effectiveness of Commonwealth and New South Wales laws in promoting fair competition and preventing monopolies and other anti-competitive behaviour in the 'on-demand' or 'gig-economy',
- (e) the adequacy of the New South Wales skills and education system in helping people adjust to the changing nature of work,
- (f) the impact of the 'on-demand' or 'gig economy' and the automation of work on:
  - (i) accident compensation schemes, payroll or similar taxes,
  - (ii) Commonwealth taxes which support New South Wales Government expenditures,
- (g) the application of workplace laws and instruments to people working in the 'on-demand' or 'gig-economy', including but not limited to:
  - (i) the legal or work status of persons working for, or with, businesses using online platforms,
  - (ii) the application of Commonwealth and New South Wales workplace laws and instruments to those persons, including, superannuation and health and safety laws,
  - (iii) whether contracting or other arrangements are being used to avoid the application of workplace laws and other statutory obligations,
  - (iv) the effectiveness of the enforcement of those laws and regulations,
  - (v) regulatory systems in other Australian jurisdictions and in other countries, including how other jurisdictions regulate the on-demand workforce and are adapting to the automation of work,
  - (vi) Australia's obligations under international law, including International Labour Organization conventions,

- (h) whether current laws and workplace protections are fit for purpose in the 21st century, including workplace surveillance laws and provisions dealing with workplace change obligations and consequences,
- (i) whether workers should have agency over the way the data they generate at work is used and, if so, what legal framework is required to provide this,
- (j) how employers and other businesses should manage and use the information generated by the workforce,
- (k) how government as a best practice employer should manage and use the information generated by its workforce,
- (l) whether, and what, legislative or other measures should be taken to:
  - (i) reform workplace laws and instruments to account for the emergence of the 'on-demand' or 'gig economy' and the automation of work,
  - (ii) reform the skills and education systems to help people adjust to the changing nature of work,
  - (iii) reform taxation laws to promote economic growth and protect public finances,
  - (iv) reform competition laws to promote fair competition and prevent monopolies in the on-demand or gig-economy,
  - (v) reform accident compensation schemes and other social insurance schemes to account for the emergence of the 'on-demand' or 'gig economy' and the automation of work, and
- (m) any other related matter.

The terms of reference were referred to the committee by the Legislative Council on 24 March 2020.<sup>1</sup>

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<sup>1</sup> *Minutes*, NSW Legislative Council, 24 March 2020, pp 863-864.



## Committee details

### Committee members

<b>Hon Daniel Mookhey MLC</b>	Australian Labor Party	<i>Chair</i>
<b>Hon Mark Banasiak MLC</b>	Shooters, Fishers and Farmers Party	<i>Deputy Chair</i>
<b>Hon Lou Amato MLC*</b>	Liberal Party	
<b>Hon Scott Barrett MLC**</b>	The Nationals	
<b>Ms Abigail Boyd MLC***</b>	The Greens	
<b>Hon Greg Donnelly MLC****</b>	Australian Labor Party	
<b>Hon Courtney Houssos MLC</b>	Australian Labor Party	
<b>Hon Shayne Mallard MLC</b>	Liberal Party	
<b>Hon Mark Pearson MLC</b>	Animal Justice Party	
<b>Hon Adam Searle MLC</b>	Australian Labor Party	

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\* The Hon Lou Amato MLC replaced the Hon Wes Fang MLC as a substantive member of the committee from 25 January 2022. The Hon Wes Fang MLC replaced the Hon Sam Faraway as a substantive member of the committee from 3 August 2020 to 25 January 2022.

\*\* The Hon Scott Barrett MLC replaced the Hon Catherine Cusack MLC as a substantive member of the committee from 1 March 2022. The Hon Catherine Cusack MLC replaced the Hon Natasha Maclaren-Jones MLC as a substantive member of the committee from 25 January 2022 to 1 March 2022.

\*\*\* Ms Abigail Boyd MLC replaced Mr David Shoebridge MLC as a substantive member of the committee from 31 March 2022.

\*\*\*\* The Hon Greg Donnelly MLC is a participating member from 22 October 2020 for the duration of the inquiry.

### Committee secretariat

Tarina Mather, Principal Council Officer  
Helen Hong, Principal Council Officer  
Vanessa O'Loan, Principal Council Officer  
Lauren Evans, Senior Council Officer  
Tina Mrozowska, Administration Officer  
Merrin Thompson, Director

## Chair's foreword

Workplaces today are vastly different to what they once were. Technological advancement, emergence of new industries and pandemic-led changes to the way in which we work are just some of the developments that workers, employers and governments are grappling with.

This inquiry has been wideranging, involving nine public hearings and 53 submissions. While our first report, released in March, focused on the gig economy, this second and final report outlines the extensive evidence the committee received about surveillance and automation occurring in workplaces across the state. The evidence provided a compelling account that proactive, deliberate and creative interventions are required to better shape the future of work in New South Wales.


The committee heard that technological advancement is rapidly expanding workplace surveillance and the automation of work, with the latter bringing job loss and job change. Employers, motivated by bottom lines, are unchecked and unchallenged in their use of these tools, reaping the benefits that flow. Employees, stressed by constant monitoring, lack adequate protections, are sidelined in the process, and do not share in the benefits. Meanwhile, our government, lagging behind with outdated or non-existent laws, has not ensured adequate worker safety, privacy and protection, doing little to plan for the future of work.

Evidence to this inquiry makes it clear that we cannot leave the fate of our workplaces and indeed the labour market in the hands of tech companies – it is for us to shape. The social and economic prosperity of our society rests on it.

This report sets out 13 recommendations aimed at improving the way in which surveillance is undertaken in workplaces and how automation can be better managed. The committee recommends updating workplace surveillance laws including to improve protection for workers, and to require their involvement in the process and the sharing of benefits. We provide detailed guidance on what these legislative updates should include. We also recommend enhanced regulation in respect of workplace automation, better access to training, and best practice guidance on implementing automation in workplaces. This includes regulating the allocation of work via technology, ensuring funded and accessible training for workers impacted by automation, and developing a strategy for managing technological advancements in public sector agencies.

The committee acknowledges that solutions to the problems presented during this inquiry are not straightforward. However, we are hopeful that with the adoption of the recommendations in this report we can achieve what many stakeholders are seeking – and be the architects of our future. A future where technological advancements accords with our values, where our laws protect and support workers, and where businesses, employees and society thrive on the purposeful interventions we adopt today to shape the changing nature of work.

Participants in this inquiry provided cogent and extensive insights into the impact of technology in workplaces. Their experiences and expertise were invaluable in shaping recommendations for reform and I thank everyone who contributed through submissions and oral evidence. I would also like to express appreciation to my committee colleagues for their collaborative and thoughtful work on this important inquiry and their commitment to the issues at hand. Finally, I thank the secretariat for their professional assistance and support.



Hon Daniel Mookhey MLC  
**Committee Chair**

## Recommendations

- Recommendation 1** **25**  
That the NSW Government update the *Workplace Surveillance Act 2005* to take account of contemporary workplace surveillance activities and advancements in technologies.
- Recommendation 2** **25**  
That the NSW Government build into these laws clear privacy protections for workers, consultation and consent requirements and dispute resolution processes, and:
- clarify that the law applies to surveillance of all work done in New South Wales regardless of whether the surveillance occurs in New South Wales or another jurisdiction
  - provide clear protection for freedom of association.
- Recommendation 3** **25**  
That the NSW Government undertake extensive consultation with workers, unions, business groups and experts to inform the legislative amendment.
- Recommendation 4** **25**  
That the NSW Government develop a best practice framework to guide the use of workplace surveillance measures in workplaces in New South Wales.
- Recommendation 5** **25**  
That the NSW Government consider amending workplace surveillance laws to require external approval prior to an employer undertaking or implementing workplace surveillance measures and for the magistrate to have conciliation powers. An application must detail:
- the surveillance to be carried out and the way in which it is to be done
  - what data or information is to be collected
  - how this is to be collected and stored
  - where the information is to be stored and by whom
  - how the data is to be accessed and by whom
  - the purpose(s) to which the collected data may be put, including whether and how it is to be monetized by the employer (such as sale to third parties or use in automation) and
  - who benefits from the data/information collected
  - how this information is to be retained or destroyed.
- Recommendation 6** **25**  
That the NSW Government amend workplace surveillance laws to enhance notification requirements such that employers must provide reasonable response timeframes and establish processes for employees to negotiate and oppose proposed surveillance activities.

**Recommendation 7**

28

That the NSW Government consider amending work health and safety and other laws to address the growing concerns surrounding work intensification, expressly providing to workers:

- the right to refuse excessive or unreasonable workloads or intrusions into personal and family time.
- the right to rest in the form additional leave, commensurate with hours worked in excess of a determined reasonable limit
- the right to disconnect from work devices and the obligation to respond to work communications, for set periods of time outside of work hours
- a right for registered organisations to inspect software/platforms/code/algorithms/apps used to allocate work and set workloads.

**Recommendation 8**

44

That the NSW Government consider amending work health and safety laws to regulate the allocation of work by software/platforms/code/algorithms/apps, expressly providing that the allocation of work:

- must not be unsafe, excessive or create unreasonable workloads
- must comply with requirements of industrial instruments covering the work
- must not use discriminatory attributes in the distribution of work
- must promote a fair and equitable distribution of work, with systems promoting a right to disconnect through a fair rotational allocation of work system, rather than an always on fastest finger approach to work allocation.

**Recommendation 9**

45

That the NSW Government consider ways to increase funding for Technical and Further Education and Vocational Education and Training programs, including making them accessible and applicable to regional New South Wales.

**Recommendation 10**

45

That the NSW Government facilitate a tripartite industry approach, including employers and registered organisations, to training and skills development.

**Recommendation 11**

46

That the NSW Government develop a strategy for *Managing technological advancement in NSW public sector agencies* that addresses the issues canvassed in this report.

**Recommendation 12**

46

That NSW Government develop a best practice framework to guide the implementation of automation in other workplaces in New South Wales including by considering:

- funding by employers and government to support the training of employees in industries facing job displacement from automation
- modern termination, change and redundancy laws that focus on re-skilling and re-deployment, with redundancy as a last resort.

**Recommendation 13**

**46**

That the NSW Government, in consultation with workers, unions, business groups and experts, enhance the regulation of workplace automation activities, including to:

- provide notification and consultation requirements for employees
- establish dispute resolution processes
- set best practice guidance for the adoption of new automation technologies in workplaces.

Further, that the NSW Government consider amending laws to require external approval prior to an employer undertaking or implementing automation measures, with the same regulatory framework as outlined for workplace surveillance in recommendation 5.

## **Conduct of inquiry**

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 24 March 2020.

The committee received 53 submissions and one supplementary submission.

The committee held seven public hearings at Parliament House in Sydney and two virtual hearings.

The committee also conducted a site visit to the Amazon Distribution Centre on 17 May 2021.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.

# Chapter 1      Background

This chapter, which sets the scene for the body of the report, starts by providing a brief overview of the inquiry. It then outlines developments since the release of the committee's first report, including the New South Wales Government's response to that report. Following that, it provides an overview of workplace surveillance and the relevant legislation. It then outlines the history of the automation of work including the current regulatory frameworks.

## Structure of the inquiry

- 1.1 This select committee was established by the Legislative Council on 24 March 2020 to inquire into the impact of technological and other change on the future of work and workers in New South Wales.<sup>2</sup>
- 1.2 The terms of reference for the inquiry, shown on pages v-vi, required the committee to examine how the advancement of technology is changing the world of work, the challenges and opportunities that arise, and the implications for current workplace laws and regulation, the economy and taxation. The committee received 53 submissions and conducted nine hearings over the course of 19 months. Due to the breadth of issues covered, the committee has produced two reports for this inquiry.
- 1.3 The first report was tabled in April 2022 and provided a comprehensive analysis of the on-demand or gig economy in New South Wales, addressing whether current workplace laws and regulation adequately protect these types of workers.
- 1.4 This second report examines two key issues in the terms of reference: the nature and extent of automation and workplace surveillance, including the appropriateness of current legislation; and how both issues will further change the nature of work in New South Wales.

## Developments since the first report

- 1.5 The committee's first report, *The Gig Economy*, included four findings and 22 recommendations. Together, these addressed shortcomings in the manner in which New South Wales regulates the gig economy and the state's failure to ensure basic workplace rights, protections and entitlements for gig economy workers.
- 1.6 Since the release of the report, the Commonwealth Government has announced plans to overhaul the industrial relation systems to protect workers of the gig economy. In June 2022 it announced plans to:
  - increase the powers for the Fair Work Commission to set minimum standards for gig workers, including with respect to minimum wages and earning protections

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<sup>2</sup> *Minutes*, NSW Legislative Council, 24 March 2020, pp 875-877.

- increase flexibility and scope of the Fair Work Commission to deal with 'employee-like' forms of work
- conduct extensive consultation with the platforms, unions and employers.<sup>3</sup>

**1.7** The NSW Government responded to the committee's first report on 4 October 2022. It advised that it did not support 14 out of the 22 recommendations, underscoring its view that 'any regulation of gig workers should be enacted, administered and enforced by the Commonwealth'.<sup>4</sup> By contrast, the committee's view, reflected in the recommendations that were not supported, was that New South Wales should take steps to regulate the gig economy to provide workers with a minimum wage, paid leave and other basic workplace entitlements. In making these recommendations, the committee recognised the constitutional issues with respect to industrial relations laws and the agreement between states and territories in 2009 to refer those laws to the Commonwealth. However, we concluded that, in the absence of a Commonwealth led response, the NSW Government is responsible for protecting workers in its state and is thus obliged to act.<sup>5</sup>

**1.8** In respect of the recommendations aimed at improving the safety of workers, the government accepted a number of those recommendations in principle. It advised that it has taken steps to improve the safety of workers including that SafeWork NSW developed guidance material targeting food delivery riders and it has also commenced administering the *Work Health and Safety Amendment (Food Delivery Riders) Regulation 2022*, which places new safety obligations on workers and platforms.

**1.9** It also contended that workers undertaking on demand passenger services are also already subject to strict safety provisions under the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* and associated regulations.

**1.10** While the committee is encouraged by the recent announcements by the Commonwealth Government, at the present time New South Wales continues to lag behind the progress made by other jurisdictions.

## Workplace surveillance

**1.11** This section provides an overview of Commonwealth and New South Wales law in respect of workplace surveillance.

**1.12** The *Workplace Surveillance Act 2005* (NSW) (the Act) regulates the surveillance of employees in New South Wales. The legislation was based on the *Workplace Video Surveillance Act 1998* introduced by the then Attorney General the Hon Jeff Shaw QC MLC in May 1998.

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<sup>3</sup> Media release, The Hon Tony Burke MP, Minister for Employment and Workplace Relations, 'Important step on rights for gig workers', 29 June 2022.

<sup>4</sup> Government response - Report No. 1 - Select Committee on the impact of technological and other change on the future of work and workers in New South Wales - The gig economy - First report, tabled 4 October 2022, p 3.

<sup>5</sup> Government response - Report No. 1 - Select Committee on the Impact of Technological and Other Change on the Future of Work and Workers in New South Wales - *Impact of technological and other change on the future of work and workers in New South Wales: The gig economy* - First report, tabled 4 October 2022.



The legislation was designed to ‘regulate the covert video surveillance of employees in the workplace by their employers’ and was developed in consultation with unions and employers.<sup>6</sup>

**1.13** In his second reading speech, Mr Shaw indicated that:

This is an industrial issue of great importance. Currently video surveillance in the workplace is unregulated. A number of major industrial disputes have arisen over video surveillance by employers. The fact that the area is presently unregulated has both surprised parties to disputes and contributed to the escalation of the disputes. The Government has developed a balanced system of regulation to address the issue.<sup>7</sup>

**1.14** In 2005, the Hon Bob Debus MP, Attorney General and Minister for the Environment, introduced updated legislation to include and extend protections around camera, computer and tracking surveillance. Additionally, it sought to ensure that workers are made aware of surveillance methods utilised by their employers.<sup>8</sup> This second Act came into effect in June 2005.

**1.15** Each Australian jurisdiction is responsible for regulating workplace surveillance and as such what is covered by one state or territory may not necessarily be in place elsewhere. The relevant legislation in other Australian jurisdictions is as follows:

- Queensland – *Invasion of Privacy Act 1971* (Qld) and *Criminal Code Act 1899*
- Victoria – *Surveillance Devices Act 1999* (Vic)
- South Australia – *Surveillance Devices Act 2016* (SA)
- Western Australia – *Surveillance Devices Act 1998* (WA)
- Tasmania – *Listening Devices Act 1991* (Tas)
- Northern Territory – *Surveillance Devices Act 2007* (NT)
- Australian Capital Territory – *Workplace Privacy Act 2011* (ACT)

**1.16** Additionally, the *Privacy Act 1988* (Cth) and the Australian Privacy Principles protect and regulate the way an individual's personal information is handled.

**1.17** The *Workplace Surveillance Act 2005* defines 'workplace' and 'surveillance' separately. Accordingly, workplace 'means premises, or any other place, where employees work, or any part of such premises or place'.<sup>9</sup>

**1.18** The Act also defines 'at work' to provide employees and employers with a clear understanding of when an employee can be considered to be at work for an employer. An employee is considered to be at work if they are:

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<sup>6</sup> Hon JW Shaw QC MLC, Second reading speech: Workplace Video Surveillance Bill, Legislative Council, Hansard, 26 May 1998.

<sup>7</sup> Hon JW Shaw QC MLC, Second reading speech: 26 May 1998.

<sup>8</sup> Hon Bob Debus MP, Second reading speech: Workplace Surveillance Bill, Legislative Assembly, Hansard, 4 May 2005.

<sup>9</sup> *Workplace Surveillance Act 2005*, s 3.

(a) at a workplace of the employer (or a related corporation of the employer) whether or not the employee is actually performing work at the time, or

(b) at any other place while performing work for the employer (or a related corporation of the employer).<sup>10</sup>

**1.19** Surveillance specifically relates to the means by which surveillance of an employee is legally allowed to occur. These means include camera, computer and tracking surveillance and are defined as follows:

(a) **camera surveillance**, which is surveillance by means of a camera that monitors or records visual images of activities on premises or in any other place

(b) **computer surveillance**, which is surveillance by means of software or other equipment that monitors or records the information input or output, or other use, of a computer (including, but not limited to, the sending and receipt of emails and the accessing of Internet websites)

(c) **tracking surveillance**, which is surveillance by means of an electronic device the primary purpose of which is to monitor or record geographical location or movement (such as a Global Positioning System tracking device).<sup>11</sup>

**1.20** Surveillance by means of listening device is regulated by the *Surveillance Devices Act 2007* (NSW).<sup>12</sup> Therefore if camera surveillance by an employer includes the ability to record private conversations the *Workplace Surveillance Act 2005* and the *Surveillance Devices Act 2007*, both apply.

**1.21** In regards to other legislation that has a direct relationship with the *Workplace Surveillance Act 2005*, the *Work Health and Safety Act 2011* (Cth), together with the Work Health and Safety Regulation 2017 and various codes of practice, provide the legislative framework that sets out the health and safety obligations of businesses and entitlements of workers in New South Wales. These obligations include duty of care; provision of personal protective equipment and safety training; and requirements to report serious accidents, injury or death in the workplace.<sup>13</sup>

**1.22** While the two pieces of legislation often operate in tandem, a requirement imposed by or under the *Work Health and Safety Act 2011* does not limit or otherwise affect the operation of the *Workplace Surveillance Act 2005*.<sup>14</sup>

**1.23** The Australia Institute's Centre for Responsible Technology report that most Australians are subject to electronic monitoring and that most workplaces use one or more methods of electronic or digital surveillance.<sup>15</sup>

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<sup>10</sup> *Workplace Surveillance Act 2005*, s 5(1).

<sup>11</sup> *Workplace Surveillance Act 2005*, s 3.

<sup>12</sup> *Surveillance Devices Act 2007*, s 4(3)

<sup>13</sup> *Work Health and Safety Act 2011* (NSW), s 19, ss 35-39; Work Health and Safety Regulation 2017, ss 45-47.

<sup>14</sup> *Workplace Surveillance Act 2005*, s 8.

<sup>15</sup> Submission 3, The Australia Institute's Centre for Responsible Technology, p 3.

- 1.24 A number of inquiry participants noted that COVID-19 and the greater proportion of employees now accessing flexible working arrangements have both changed the way workers engage with the workplace and has also meant that the nature of surveillance has changed.<sup>16</sup>
- 1.25 At the same time, technology has created new methods to monitor workers, such as wearable GPS devices, hand-held scanner guns equipped with timers, radio frequency identification (RFID) chips in ID tags, real-time monitoring of computer inputs and Internet of Things (IoT) applications such as movement and voice monitoring.<sup>17</sup>
- 1.26 Chapter 2 outlines the current approach to workplace surveillance, inquiry participant views on the problems with that approach, and suggestions for reform.

### Automation of work

- 1.27 The 'automation of work' is not a new phenomenon. The process of automation evolved from mechanisation which 'refers to the replacement of human (or animal) power with mechanical power of some form' and began during the Industrial Revolution.<sup>18</sup>
- 1.28 The term 'automation' was coined in the 1940s and has been attributed to Mr DS Harder, an engineering manager at the Ford Motor Company. It was widely adopted by the automotive and manufacturing industries to describe the increased use of automatic devices and controls in mechanised production lines.<sup>19</sup>
- 1.29 Today, workplace automation refers to the use of systems to perform repetitive or predictable tasks without direct human inputs. Automation can be applied to physical tasks using machinery or robots, or they may be data-driven processes using the assistance of machine technology such as artificial intelligence, software or algorithms.<sup>20</sup>
- 1.30 In regards to the use of machine technology there are two main processes. The first is 'rules-based' which simulates a human decision-making process by following a logical set of rules or formulae. Rules based processes are often used to perform functions at scale such as data-matching, issuing of system generated notices, calculation of amounts, and processing of online forms.<sup>21</sup>

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<sup>16</sup> See for example: Mr Bernie Smith, Branch Secretary, Shop, Distributive and Allied Employees' Association, NSW Branch, 29 June 2022, p 23; Answers to questions on notice, Transport Workers Union, 20 January 2021, p 3; Evidence, Ms Claire Pullen, Project Officer, Public Service Association of New South Wales, 23 February 2021, p 32; Evidence, Ms Abha Devasia, National Research Coordinator, Australian Manufacturing Workers' Union, 23 February 2021, p 33.

<sup>17</sup> Submission 3, The Australia Institute's Centre for Responsible Technology, p 4; Submission 6, United Workers Union, p 42.

<sup>18</sup> Britannica, *Automation*, <https://www.britannica.com/technology/automation/Development-of-robotics>

<sup>19</sup> Britannica, *Automation*, <https://www.britannica.com/technology/automation/Development-of-robotics>

<sup>20</sup> Rachel Hastings, *The Pros and Cons of Automation in the Workplace* (21 November 2021), Emeritus, <https://emeritus.org/blog/pros-and-cons-of-automation-in-the-workplace/>

<sup>21</sup> NSW Ombudsman, *The new machinery of government: using machine technology in administrative decision making*, (2021), p 14.

- 1.31** The second is referred to as 'machine learning'. This type of automation trains the machine to identify correlations and patterns in data based on a set of 'training data'. This process and the exposure to 'real world' data then identifies the features and parameters of the data through an iterative process of trial and error to optimise the proportion of 'right' inferences that are made.<sup>22</sup> The systems are said to 'learn' as they are 'capable of changing their behaviour to enhance their performance' without explicit programming.<sup>23</sup> These systems can be used for functions such as categorising images or grouping together cohorts of people based on specified characteristics.<sup>24</sup>
- 1.32** It is important to note that decision making systems may incorporate elements of both of the aforementioned processes.

### Regulation of automation processes

- 1.33** In May 2019, Australia became a signatory to the Organisation for Economic Co-operation and Development Principles on Artificial Intelligence which defines an Artificial intelligence system as:
- a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments. AI systems are designed to operate with varying levels of autonomy.<sup>25</sup>
- 1.34** However, as at the time of writing, there is no standalone legislation in New South Wales that specifically legislates or regulates the use of automated processes using machinery or machine technology. Rather, these processes are regulated by and within individual pieces of existing legislation.<sup>26</sup>
- 1.35** The NSW Ombudsman and the Commonwealth Ombudsman have both issued best practice guides to assist public sector agencies in the use of automation in decision making.<sup>27</sup>
- 1.36** The Australian Human Rights Commission in its *Human Rights and Technology Report* emphasises that regardless of the type of organisation, human rights should be at the centre of the approach to technology and that human rights impact assessments should be conducted before automated decision-making systems are adopted.<sup>28</sup>

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<sup>22</sup> NSW Ombudsman, *The new machinery of government: using machine technology in administrative decision making*, (2021), pp 14-15.

<sup>23</sup> NSW Ombudsman, *The new machinery of government: using machine technology in administrative decision making*, p 15.

<sup>24</sup> NSW Ombudsman, *The new machinery of government: using machine technology in administrative decision making*, p 15.

<sup>25</sup> Organisation for Economic Co-operation and Development 'Recommendation of the Council on Artificial Intelligence' OECD/ Legal/0449 adopted on 22 May 2019, [https://oecd.org/en/instruments/OECD-LEGAL-0449#\\_ga=2.201771153.1806885565.1559533436-1967103450.1558928769](https://oecd.org/en/instruments/OECD-LEGAL-0449#_ga=2.201771153.1806885565.1559533436-1967103450.1558928769)

<sup>26</sup> NSW Ombudsman, *The new machinery of government: using machine technology in administrative decision making*, p 23.

<sup>27</sup> NSW Ombudsman, *The new machinery of government: using machine technology in administrative decision making*; Commonwealth Ombudsman, *Automated decision making – Better Practice Guide*, (2019).

<sup>28</sup> Australian Human Rights Commission, *Human Rights and Technology, Summary of the Final Report*, 2021, p 7.

- 1.37** Both the Australian and NSW Governments have issued a range of strategies, plans and policies that agencies are required to adhere to in the take up of new and emerging technologies.<sup>29</sup>
- 1.38** Despite the introduction of policies and strategies, the NSW Ombudsman highlighted that at the present there is 'no mandatory reporting or means of comprehensively tracking technology use by the NSW Government'.<sup>30</sup> Therefore it is not clear how many NSW Government agencies are using, or developing, machine technology to assist them in the exercise of their statutory functions.<sup>31</sup>

## Committee comment

- 1.39** The pace of technological advancement in recent years has created large scale benefits to employers, employees and society more broadly. However, with this, has come significant and unprecedented challenges for workplaces in New South Wales and for those charged with regulating them.
- 1.40** It is clear that technology is impacting all workplaces across all industries and sectors. Whether it be through increased surveillance on workers or technology advancements leading to productivity gains and automation, the pace of change and complexity of the challenges they pose cannot be understated.
- 1.41** The committee agrees with stakeholders that proactive and deliberate consideration and management of these issues is required. We cannot sit back and leave tech companies, or indeed the Commonwealth Government, to dictate the future of technology in workplaces in New South Wales. Nor can we allow the driving force behind technological advancements to be all about bottom lines and profits for companies.
- 1.42** Work provides a key foundation of our communities and our engagement in it contributes to standards of living, economic prosperity and social wellbeing and cohesion. It is therefore critical that, as we embrace the fourth phase of the industrial revolution, we actively shape, guide and determine the role that technology will have in our workplaces - and more importantly, what this means for workers across this State.
- 1.43** A key message from our first report was that government must take a much more active role in managing the impact of technological change on workers in the gig economy – anticipating the changes that are taking place, monitoring them and their effects, engaging with both business and workers to shape their experiences of it, and proactively building the right regulatory measures to protect workers.<sup>32</sup> This message holds equally true in respect of workplace surveillance and the automation of work, the focus of our second and final report.

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<sup>29</sup> Australian Human Rights Commission, *Human Rights and Technology, Final Report* (2021), p 24 and NSW Ombudsman, *The new machinery of government: using machine technology in administrative decision making*, p 9.

<sup>30</sup> NSW Ombudsman, *The new machinery of government: using machine technology in administrative decision making*, p 18.

<sup>31</sup> NSW Ombudsman, *The new machinery of government: using machine technology in administrative decision making*, p 3.

<sup>32</sup> Select Committee on the Impact of Technological and Other Change on the Future of Work and Workers in New South Wales, *First report – The gig economy*, p 109.



## Chapter 2 Workplace surveillance

Workplace surveillance has existed, in some form or another, for as long as there has been paid labour. However, with significant enhancements in technology, strengthened workplace regulation as well as changes to the way in which we work, the nature and extent of surveillance undertaken in workplaces has changed and indeed expanded.

Not only does technology permit employers to continue to communicate and require work of their employees well outside of workplaces and times, but it allows for greater scrutiny of workers than ever before. Monitoring who is 'logged on', when and for how long, whether there are regular 'key strokes' performed, and the time taken to perform tasks or deliver work product can now be done faster and at greater scale than at any earlier time.

This applies not only to 'white collar' work but also to work performed in supermarkets,<sup>33</sup> warehousing, factories,<sup>34</sup> deliveries<sup>35</sup> and other manual workplaces.<sup>36</sup> One example of this is the Amazon-style situation,<sup>37</sup> where there is constant measuring of work performance and times and constant changes to the way in which work is performed, using the information derived from watching workers. Evidence taken from a wide range of stakeholders shows surveillance today takes many forms, ranging from medical and biometric surveillance to invasive use of security cameras and new trends emerging during the COVID-19 working from home arrangements. Such technological trends can erode the employment relationship and the quality of jobs offered, and create more insecure forms of work. Technological change has also been linked to work intensification and unsafe work practices.

Evidence received by the inquiry reveals a significant gap between the new technologies being used at work and the legal, industrial and social architecture needed to protect workers. New South Wales enacted legislation in 1998 and in 2005 to regulate the way in which employers conduct surveillance activities in the workplace. The law was created to deal with unregulated, covert surveillance of workers in warehousing to prevent theft. Its essential structure was developed before the internet was widely used. It required employers to obtain the permission of a magistrate before cameras could be installed in workplaces. The extent to which these existing laws remain adequate for contemporary contexts, including to safeguard workers' rights, is a key theme canvassed in this chapter.

There is much more sophisticated monitoring of workers now occurring across the economy. This data is derived from workers themselves, then used to continuously change the performance of work and design of work and workplaces to improve productivity. This often leads to automation and other changes that impact negatively on existing jobs. Workers have no avenues to share in any additional wealth these changes create.

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<sup>33</sup> Submission 19, Shop, Distributive and Allied Employee's Association (NSW Branch).

<sup>34</sup> Aimee Chanthadavong, 'Amazon to build its first robotic and largest fulfilment centre in Australia', ZDNET, 29 June 2020, <https://www.zdnet.com/article/amazon-to-build-its-first-robotic-and-largest-fulfilment-centre-in-australia/>

<sup>35</sup> Pat McGrath, Marty Smiley and Max Chalmers, 'No way to live', <https://www.abc.net.au/news/2021-08-29/amazon-flex-delivery-drivers-voice-safety-concerns/100404498>.

<sup>36</sup> See for example Submission 6, United Workers Union.

<sup>37</sup> Margaret Burin, 'They resent the fact I'm not a robot', <https://www.abc.net.au/news/2019-02-27/amazon-australia-warehouse-working-conditions/10807308>.

The inclusion of termination, change and redundancy clauses in industrial awards and agreements were intended to assist in managing these situations, by requiring consultation before significant changes, including technology-based ones, were implemented in workplaces. However, industrial tribunals and courts have not required strict or even any real adherence to these requirements. Given the fundamental shift in industrial relations laws affecting the private sector to the federal system, the ability of states to address this is limited.

One approach that may be available to states is by regulating the introduction of new technologies more generally, not only in the employment context. New medicines are not provided to the community until they are tested, yet new technologies are allowed to become widespread without any knowledge of their impacts on health and safety. Using work health and safety laws, which are not overridden by Commonwealth industrial relations laws, to undertake this role is certainly worth exploring.

The chapter outlines the current approach to surveillance in New South Wales workplaces. It then considers problems with current surveillance practices and outlines suggestions for improved management of workplace surveillance into the future, focusing on legislative reform.

## The current approach

- 2.1** The committee heard that workplace surveillance can be undertaken for a range of reasons and the resultant data used in a range of ways. On the one hand, surveillance can be considered passive and protective, bringing increased safety at work. By contrast, it can also be considered to be active monitoring, causing employees to feel targeted.<sup>38</sup>
- 2.2** The Centre for Future Work provided a list of the varied nature of surveillance activities that are currently utilised in workplaces,<sup>39</sup> set out on the following page.
- 2.3** The data generated from these types of surveillance activities can be used by workplaces to achieve a myriad of outcomes. The Centre for Responsible Technology explained that surveillance data can, and is, currently being used in workplaces to achieve the following aims:
- increase work intensification (the greater effort required from workers during work hours)
  - observe and control worker to worker interactions
  - tighten management control
  - to shift risk to workers
  - to predict future behaviour
  - to on-sell to data brokers and management companies (value extraction), and
  - to drive human redundancy through job replacement and automation.<sup>40</sup>

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<sup>38</sup> Answers to questions on notice, Professor Ariadne Vromen, Professor of Public Administration, Crawford School of Public Policy, Australian National University, *Between frustration and invigoration: Women talking about digital technology at work*, p 12.

<sup>39</sup> Submission 5, Centre for Future Work, p 8.

<sup>40</sup> Submission 3, Centre for Responsible Technology, p 4.



<b>Table 2</b>
<b>Diverse Forms of Electronic Monitoring and Surveillance</b>
Automated systems to collect consumer ratings and staff evaluation
Biometrics (such as finger scans, facial recognition, retinal scans)
Closed Circuit Television (CCTV) surveillance
Digital badges to track location, tone of voice, frequency and content of conversation
Digital performance and quality management in production systems
Digital profiling and social media history compilation and screening
Electronic time-stamp and attendance systems
Gamification: use of game-like techniques to boost attendance and work effort
Global Positioning System (GPS) tracking in vehicles, ID cards, etc.
Location tracking for off-site contractors and other mobile workers
Microchipping employees to track location and activity
Monitoring email content
Monitoring keystrokes
Monitoring telephone calls
Monitoring social media content
Monitoring web browsing
On-call systems operationalised through text, mobile phone, or e-mail
Radio Frequency Identification (RFID) tracking
Swipe cards to track attendance and location
Time-motion data compilation to track output and activity
Wearables (such as Fitbit or chip implants) to track activity and location
<i>Source: Henderson et al. (2018)</i>

**2.4** Stakeholders generally agreed that workplace surveillance practices have expanded over time. The Centre for Future Work said that although there is no concrete data, workplace surveillance has expanded rapidly in recent years:

There is no comprehensive data available regarding the extent of EMS systems in Australian workplaces today. There is no doubt, however, that the number of workers being digitally monitored, and the range of techniques through which this monitoring occurs, have expanded rapidly over the last two decades.<sup>41</sup>

**2.5** Some stakeholders attributed the expansion to post pandemic working arrangements and/or the need for employers to satisfy other regulatory requirements such as workplace health and safety obligations.

**2.6** Professor Toby Walsh, Laureate Fellow and Scientia Professor of Artificial Intelligence at the University of New South Wales, observed that the impact of COVID-19 has contributed to the increased surveillance of workers beyond what was seen prior to the pandemic, outlining what is being surveilled via their computer devices:

<sup>41</sup> Submission 5, Centre for Future Work, p 7.

We know that, during the pandemic, remote work has led to the development of a host of technologies that are used to monitor workers beyond the walls of the office, primarily through their portable devices or their home computers or their laptop computers. They do things like monitor time on screen, keystroke monitoring, mouse usage. There's software that's become quite popular that allows the tracking and sorting of workers based on their remote performance as recorded by their devices. This has led to a kind of granular level of tracking of work that didn't take place, for the most part, in the workplace prior to the pandemic.<sup>42</sup>

**2.7** Ms Nicola Street, National Manager – Workplace Relations Policy, with the Australian Industry Group expressed the view that workplace surveillance is being undertaken for legitimate purposes and explained the reasons for it:

New South Wales employers who engage in workplace surveillance generally do so because there are lawful and legitimate purposes. Many of these reasons include to comply with or manage legal obligations relating to work health and safety; employee conduct—for example, taking steps to prevent sexual harassment, including online; and employment record-keeping requirements required by the Fair Work Act and regulations. There are other reasons that may justify surveillance regarding the protection of the organisation as well as protecting other people from harm or damage.<sup>43</sup>

**2.8** While some stakeholders considered workplace surveillance to be for entirely legitimate purposes, others expressed concern that there has been a 'creep' in surveillance activities and the way in which the data generated is being used. These participants outlined that while surveillance might be introduced under the guise of health and safety purposes or general performance monitoring, in practice, the use of the information goes far beyond these purposes, and is being used for punitive activities such as disciplinary processes. Examples of these views included:

- Ms Abha Devasia, National Research Coordinator, Australian Manufacturing Workers' Union reported, 'what we are seeing is kind of a functional creep of the type of surveillance that moves into being used for disciplinary issues, managing time, hurrying people along from a basic perspective and moving right along to using it to dismiss [union] members.'<sup>44</sup>
- In the Australian Workers Union's (AWU's) experience, while employers commonly introduce heightened surveillance under the guise of safety, in practice it is inappropriately used to supervise, monitor and discipline workers for industrial issues.<sup>45</sup> In a survey of AWU members one in seven said that data obtained from surveillance devices had been used to unduly discipline them.<sup>46</sup>

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<sup>42</sup> Evidence, Professor Toby Walsh, Laureate Fellow and Scientia Professor of Artificial Intelligence, University of New South Wales, 29 June 2022, p 4.

<sup>43</sup> Evidence, Ms Nicola Street, National Manager – Workplace Relations Policy, Australian Industry Group, 29 June 2022, p 32.

<sup>44</sup> Evidence, Ms Abha Devasia, National Research Coordinator, Australian Manufacturing Workers' Union, 23 February 2021, p 33.

<sup>45</sup> Submission 23, Australian Workers' Union, p 6.

<sup>46</sup> Submission 23, Australian Workers' Union, p 6.

- The Centre for Responsible Technology said that the 'pandemic and shift to home [based] work has only intensified monitoring trends' and that the 'monitoring of workers has gone way beyond work performance'.<sup>47</sup>
- According to the Australian Rail, Tram and Bus Industry Union, NSW Branch, there is an increasing prevalence in Australian workplaces of employers utilising surveillance equipment to monitor their employees. Too often it used for purposes that do not justify the intrusion into the privacy of those being monitored.<sup>48</sup>
- Ms Claire Pullen, Project Officer with the Public Service Association, said that members have reported that technology and surveillance is being used to time toilet breaks in their own homes and that their union activity is monitored.<sup>49</sup>
- The United Workers' Union said that its members accept the need for some surveillance but said that 'issues arise when the scope of surveillance becomes overtly punitive, invasive or disproportionate'.<sup>50</sup>

## Concerns with the current approach

**2.9** Inquiry participants provided a range of insights into the problems with the current approach to workplace surveillance. Their concerns coalesced around the intensification of work, impacts on workers' mental health, loss of privacy, lack of transparency and consent, and the heightening of employers' power relative to that of employees. This evidence is explored below.

**2.10** The Centre for Future Work observed in broad terms that employers' focus to elicit maximum effort and productivity from workers serves as a driver for increased surveillance, and highlighted the impact this has on workers:

...time pressure is intensified with the expectation that every moment of work time must be used for productive purposes – an expectation that is increasingly reinforced through omnipresent systems of monitoring, performance measurement, and surveillance. The result of these twin forces is an overall inability for people to escape from the demands of work: neither at the workplace (even for short periods), nor away from it.<sup>51</sup>

**2.11** In discussing the increase of workplace surveillance measures, some stakeholders raised concerns about work intensification and the 'right to disconnect'. The Centre for Future Work explained work intensification and the result that, increasingly, workers are finding it difficult to disconnect from work:

The results reveal that it is not just that work is being *extended* into greater portions of our days (through unpaid overtime, the use of mobile phones and computers to reach

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<sup>47</sup> Evidence, Mr Peter Lewis, Centre for Responsible Technology, The Australia Institute, 29 June 2022, p 2.

<sup>48</sup> Submission 16, Australian Rail, Tram and Bus Industry Union, NSW Branch, p 3.

<sup>49</sup> Evidence, Ms Claire Pullen, Project Officer, Public Service Association of New South Wales, 23 February 2021, p 32.

<sup>50</sup> Submission 6, United Workers' Union, p 22.

<sup>51</sup> Submission 5, Centre for Future Work, p 24.

workers at any time, pressure to not fully utilise annual leave, and similar trends). In addition, even *within* the work day, time pressure is *intensified* with the expectation that every moment of work time must be used for productive purposes – an expectation that is increasingly reinforced through omnipresent systems of monitoring, performance measurement, and surveillance. The result of these twin forces is an overall inability for people to escape from the demands of work: neither at the workplace (even for short periods), nor away from it.<sup>52</sup>

- 2.12** Dr Joshua Healy expressed the view that there should be an entitlement to be offline during 'family hours, at antisocial times'. He suggested that despite the long history of labour rights, advancements in technology have done damage to those previously determined boundaries:

Of course, there is a long history of labour rights. The whole labour movement, to some extent, has been geared up around trying to regulate the extent to which we impose boundaries between working and non-working time, and new technologies have, sort of, done some damage to that and have eroded those boundaries.<sup>53</sup>

- 2.13** These concerns were echoed by Mr Bernie Smith from the Shop, Distributive and Allied Employee's Association. Mr Smith expressed concern about the way in which workers are offered shifts, which requires being logged into an app so that the worker is available to accept the shift as soon as it is offered. He said that while it is understandable that shifts might be offered at the last minute, people should not have to be connected at all times to avoid missing out on work:

We accept that sometimes the work can be at very short notice and maybe it is who is available at the time but, bearing that in mind, there should be a right to disconnect so you are not constantly on call all the way through.<sup>54</sup>

- 2.14** Professor Ariadne Vromen, Professor of Public Administration at the Crawford School of Public Policy, Australian National University, observed that the expectation to be continually online and therefore responsive is particularly salient for professional and knowledge workers. She expressed the view that employers have a responsibility to recognise their role in this, and called for collaboration with employers to establish guidelines that limit the encroachment of work on life.<sup>55</sup>

- 2.15** Related to the issue of work intensification, stakeholders identified impacts on the mental health of employees as another concern arising from increased workplace surveillance.<sup>56</sup> Ms Gherjestani from the Australian Workers' Union said that increased surveillance for disciplinary purposes is 'extremely harmful' and that owing to increased surveillance 'workers in

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<sup>52</sup> Submission 5, Centre for Future Work, p 7.

<sup>53</sup> Evidence, Dr Joshua Healy, Senior Lecturer in Employment Relations, The University of Newcastle, 29 June 2022, p 19.

<sup>54</sup> Evidence, Mr Bernie Smith, Branch Secretary, Shop, Distributive and Allied Employees' Association, 29 June 2022, p 25.

<sup>55</sup> Evidence, Professor Ariadne Vromen, Professor of Public Administration, Crawford School of Public Policy, Australian National University, 29 June 2022, pp 18-19.

<sup>56</sup> See for example 5, Centre for Future Work, p 19 and Submission 23, The Australian Workers' Union, pp 7-8.

the workplace are anxious all the time'.<sup>57</sup> In this vein, Professor Vromen, reported findings from her research on worker attitudes to workplace surveillance:

In our work with retail workers, they feel surveilled by their employers. They also feel that customer feedback is being used to evaluate their performance ... It's really important that we start to develop expectations and benchmarks about what are acceptable and unacceptable levels of intrusion into privacy.<sup>58</sup>

- 2.16** Concerns about mental health impacts were echoed by Mr Smith from the Shop, Distributive and Allied Employee's Association who expressed that increased monitoring and surveillance to ensure employee performance 'can lead to workload stress and can have damaging long-term effects on workers'.<sup>59</sup>
- 2.17** During the inquiry a number of participants referred to Amazon's work practices as emblematic of the level of control that technology-driven organisations are able to exert over their employees, with resulting impacts on stress levels. The committee visited Amazon's Sydney distribution centre in May 2021, where we were able to tour the facility and then received a briefing from senior staff on the company's Australian operations. Amazon representatives subsequently declined to give evidence at a hearing. Drawing on various stakeholder perspectives, the case study below explores the nature and impact of surveillance in the Amazon's workplaces.

### **Case study: Amazon Distribution Centre**

While a number of stakeholders identified that surveillance can be for legitimate purposes including for the benefit of employees, a number pointed to the surveillance practices of Amazon as an example where surveillance and monitoring is overdone, causing distress to workers.

The United Workers Union explained that Amazon requires employees to wear tracking devices such as 'smart wrist bands', microchipping and infrared monitoring systems that track their 'every single movement'.<sup>60</sup> The company has set 'pick rates' referring to the 'number of items a worker must pick and pack within a particular time frame'.<sup>61</sup> These pick rates are built into the scanner guns used by employees which count down the time left to complete the next 'pick'. This practice has led to the development of the term "Amazon pace" which refers to the need for 'slight jogging rather than walking' in order to complete the pick rates set by the company and built into the scanner guns used by staff.<sup>62</sup>

<sup>57</sup> Evidence, Ms Jamila Gherjestani, National WHS Director, Australian Workers' Union, 30 March 2021, p 49.

<sup>58</sup> Evidence, Professor Vromen, 29 June 2022, p 17.

<sup>59</sup> Evidence, Mr Smith, 19 April 2021, p 15.

<sup>60</sup> Submission 3, Centre for Responsible Technology, pp 4 & 9; Evidence, Bernie Smith, Branch Secretary, Shop, Distributive and Allied Employees' Association, 29 June 2022, p 23.

<sup>61</sup> Submission 6, United Workers' Union, p 41.

<sup>62</sup> Submission 6, United Workers' Union, p 42.

According to some participants, this hyper-granular level of tracking can result in 'customised micro-management that erodes a sense of autonomy and responsibility in the workplace'.<sup>63</sup> Others expressed that it has caused significant adverse outcomes for workers:

- Mr Bernie Smith from the Shop, Distributive and Allied Employees' Association referred to the 'famous situation overseas' where staff were 'peeing in bottles' to keep up with the Amazon pace.<sup>64</sup>
- The Centre for Responsible Technology called the intensive levels of monitoring intrusive and anxiety-inducing.<sup>65</sup>
- The Centre for Future Work explained that Amazon workers under systematic workplace surveillance reported feeling extreme pressure to meet their benchmark pick rates, with some avoiding taking bathroom or water breaks for fear of falling behind and, potentially, losing shifts.<sup>66</sup>
- The Centre for Future Work also submitted that the level of electronic monitoring and surveillance of Amazon workers caused them heightened stress, potential safety issues (related to workload, repetitive strain and other risks), and the extension of the realm of work into greater areas of general life.<sup>67</sup>
- The United Workers' Union said that one of its members expressed that they felt like they are resented because they are not a robot and are made of flesh and bone. They discussed the impact of pick times and the scanners counting down the time stating that 'the time disappears if you don't make it, just to put the fear of god into you'. Another worker reported 'it's hard, I can't make the times in the scanner ... it's really fast. I get stressed. They are always looking for your rates. It's about numbers at Amazon'.<sup>68</sup>

**2.18** In addition to the toll that workplace surveillance can take on employees, some stakeholders pointed to the lack of transparency about what surveillance data is being collected and how it is being used as a cause for concern. The Public Service Association said that its members 'are often unaware how the records they generate about themselves are kept, and for how long, and for what purpose'.<sup>69</sup>

**2.19** Mr Peter Lewis, Director of the Centre for Responsible Technology, indicated that even where employees consent to their data being used, consent forms allow employers to change the terms of consent agreements when technology changes or new opportunities arise, without having to go back to the worker. He added that the 'opportunity for abuse and exploitation of the information being collected is rife at the moment because there are no limits'.<sup>70</sup>

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<sup>63</sup> Submission 3, Centre for Responsible Technology, p 9.

<sup>64</sup> Evidence, Mr Smith, 29 June 2022, p 23.

<sup>65</sup> Submission 3, Centre for Responsible Technology, p 9.

<sup>66</sup> Submission 5, Centre for Future Work, p 8.

<sup>67</sup> Submission 5, Centre for Future Work, p 8.

<sup>68</sup> Submission 6, United Workers' Union, p 42.

<sup>69</sup> Submission 18, Public Service Association, p 15.

<sup>70</sup> Evidence, Mr Lewis, 29 June 2022, p 5.

**2.20** Other stakeholders highlighted the power imbalance that exists between the employer and employee impacting how surveillance technology is implemented.<sup>71</sup> The Centre for Future Work captured this notion, explaining the negative trends in surveillance and citing employee/employer power imbalances as an enabler of this approach:

...employers tend to implement particular kinds of technology, in specific ways, to enhance their power and profits: not just to boost output, but also to intensify work effort, monitor and discipline workers, and restructure the terms of employment. These negative trends are not inherent outcomes of technology itself. Rather, they are the result of power imbalances in employment relationships.<sup>72</sup>

**2.21** Similarly, the Centre for Responsible Technology suggested that companies are not interested in principles of transparency, greater knowledge or informed decision making, but rather are focused on what information can do for them.<sup>73</sup> It also referred to the power imbalance and the impact this has on transparency in the context of workplace relations:

A new form of inequality and power imbalance is created when only employers have access to the information they use for deciding how workers are hired, evaluated and managed. Without access to this information, workers and their representatives have no ways of understanding and, if necessary, challenging employer decisions. This leads to a reduction in transparency and bargaining power.<sup>74</sup>

**2.22** The committee heard that in 2018, the Centre for Future Work surveyed workers on the forms, prevalence, impacts and implications of electronic and digital monitoring and surveillance (EMS) in Australian workplaces. According to the Centre, some of the findings also highlighted problems with current surveillance practices:

- Nearly three-quarters of workers (71%) believe these technologies reduce privacy for workers, and 60% said it reduces trust between workers and employees.
- A majority of workers (52%) believe that the use of EMS reduces the quality or pleasure of work.
- Only a third agreed they are a good way to make workers more efficient and work harder (37%); most disagreed (53%) with that sentiment.
- Only about one-third of workers (35%) said they would prefer to work in a workplace that uses EMS technologies. Nearly half (46%) disagreed with that sentiment.<sup>75</sup>

## **Managing workplace surveillance into the future**

**2.23** Participants in the inquiry expressed views about the extent to which reform is needed to respond to workplace surveillance practices, with a particular focus on workplace surveillance laws.

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<sup>71</sup> See for example evidence, Ms Devasia, 23 February 2021, p 33 and evidence, Ms Gherjestani, 30 March 2021, p 49.

<sup>72</sup> Submission 5, Centre for Future Work, pp 3-4.

<sup>73</sup> Submission 3, Centre for Responsible Technology, p 7.

<sup>74</sup> Submission 3, Centre for Responsible Technology, p 6.

<sup>75</sup> Submission 5, Centre for Future Work, p 10.

- 2.24** As noted in chapter 1, the *Workplace Surveillance Act 2005* (NSW) (the Act) regulates the way in which employers conduct surveillance activities in the workplace. Employees may also be afforded some protections against misuse of surveillance data in privacy and labor laws.<sup>76</sup> The committee heard that the Act:
- covers optical, computer and tracking surveillance
  - requires employers to notify employees of surveillance activities
  - prohibits surveillance in sensitive areas such as change rooms, toilets etc
  - generally prohibits covert surveillance
  - states that surveillance cannot be imposed on employees outside of their work
  - allows employers to restrict access to employees' use of email and internet facilities while at work.<sup>77</sup>
- 2.25** Representatives from industry were generally of the view that existing laws are sufficient to manage contemporary workplace surveillance practices. They told the inquiry that New South Wales has one of the most advanced regulatory workplace surveillance regimes in the country and that, despite their age, the laws are broad enough in scope to account for advancements in technology underpinning contemporary workplace surveillance practices.<sup>78</sup>
- 2.26** In addition to these views, Mr Izzo from Australian Business Lawyers and Advisors responded to submissions to this inquiry that detailed new modes of surveillance, suggesting that they are covered by existing laws including by the notification requirements in those laws:
- I am aware that there have been some previous submissions put to the Committee about new modes of activity and new modes of surveillance. The vast majority of those that I have heard mentioned still fall within the notions of either camera surveillance, tracking surveillance or computer surveillance ... there are quite detailed notification requirements already in the Workplace Surveillance Act.<sup>79</sup>
- 2.27** The Australian Industry Group expressed the view that employers should not be constrained from complying with other regulatory requirements, such as work health and safety, anti-discrimination and record keeping because of workplace surveillance and privacy laws, reinforcing its view that these laws are adequate.<sup>80</sup>
- 2.28** However, the majority of other stakeholders called for a review of the *Workplace Surveillance Act 2005*, with many pointing to it being outdated, particularly in light of the vast technological developments that have taken place in the intervening period since its enactment.<sup>81</sup>

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<sup>76</sup> See for example evidence Mr Lewis, 29 June 2022, p 10; Tabled document, Australian Industry Group, Submission, 27 June 2022, pp 4-7; Submission 5, Centre for Future Work, p 10.

<sup>77</sup> Submission 5, Centre for Future Work, p 9.

<sup>78</sup> See for example Evidence, Mr Luis Izzo, Managing Director – Sydney Workplace Relations, Australian Business Lawyers and Advisors, 29 June 2022, pp 31 & 37; Evidence, Ms Street, 29 June 2022, p 36; Tabled document, Australian Industry Group, Submission, 27 June 2022, p 3.

<sup>79</sup> Evidence, Mr Izzo, 29 June 2022, p 31.

<sup>80</sup> Tabled document, Australian Industry Group, Submission, 27 June 2022, p 2.

<sup>81</sup> See for example Submission 30, Trade Workers' Union, p 77; Submission 16, Australian Rail Tram and Bus Industry Union, p 3; Submission 18, Public Service Association of New South Wales, pp 15-



**2.29** A key theme in evidence from those calling for reform centered around workers' rights.<sup>82</sup> Unions NSW captured this sentiment:

We believe the inadequacy of the Workplace Surveillance Act to keep pace with technological change contributes to a diminution of workplace rights and must be reviewed on an urgent and ongoing basis.

There should be greater legislative requirement to protect the rights of employees in workplaces in respect of workplace surveillance. There should be an obligation upon employers to put appropriate workplace policies in place which curtail inappropriate monitoring and surveillance of employees while assisting workers to clearly understand their workplace obligations and rights.<sup>83</sup>

**2.30** Professor Vromen provided detailed evidence to the inquiry regarding the inadequacy of privacy protections for workers identifying it as 'one of the most urgent issues in contemporary digital policy'.<sup>84</sup> She expressed the importance of '... developing expectations and benchmarks about what are acceptable and unacceptable levels of intrusion into privacy'.<sup>85</sup>

**2.31** The Centre for Future Work also argued that 'Australia's patchwork system of privacy and workplace laws has, to date, provided only minimal protection to Australian workers' against electronic monitoring and surveillance.<sup>86</sup>

**2.32** Similarly, the United Workers' Union highlighted that existing laws are inadequate to address risks to workers:

There is a significant gap between the capabilities of new technologies—particularly surveillance—and the legal, industrial and social protections necessary to mitigate the risks of harm to workers. Many technological issues don't neatly fit into pre-existing dispute resolution processes and legal frameworks are not always specifically applicable to the workplace.<sup>87</sup>

**2.33** To improve privacy protections for workers, the Centre for Responsible Technology referred to the European Union's General Data Protection Regulation (GDPR) as an approach to protecting rights that could be adapted to the Australian workplace by embedding privacy rights into legislation for workers. Other stakeholders, both academic and union, were supportive of this approach.<sup>88</sup> The eight rights in the GDPR, that were flagged for incorporation into workplace surveillance laws, are:

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16; Submission 19, Shop, Distributive and Allied Employee's Association, pp 4 & 17; Evidence, Mr Smith, 29 June 2022, pp 15-16 and evidence, Mr Lewis, 29 June 2022, p 2.

<sup>82</sup> See for example Submission 23, The Australian Workers' Union, pp 9-10; Submission 27, SafeWork NSW, p 2; Evidence, Mr Lewis, 29 June 2022, p 2; Evidence, Professor Vromen, 29 June 2022, p 17.

<sup>83</sup> Submission 28, Unions NSW, p 49.

<sup>84</sup> Answers to questions on notice, Professor Vromen, *Data and digital rights: recent Australian developments*, 8 July 2022, p 1.

<sup>85</sup> Evidence, Professor Vromen, 29 June 2022, p 17.

<sup>86</sup> Submission 5, Centre for Future Work, pp 17-18.

<sup>87</sup> Submission 6, United Workers' Union, p 8.

<sup>88</sup> Evidence, Professor Vromen, 29 June 2022, p 17; Evidence, Mr Smith, 29 June 2022, p 24.

1. The right to be informed
2. The right of access
3. The right to rectification
4. The right to erasure
5. The right to restrict processing
6. The right to data portability
7. The right to object
8. Rights in relation to automated decision making and profiling.<sup>89</sup>

**2.34** In addition to ensuring the rights of workers are protected, stakeholders calling for reforms to the workplace surveillance laws identified the following areas as requiring attention:

- **Definitions** – to ensure they capture contemporary surveillance measures and account for technological advancement<sup>90</sup>
- **Purpose** – surveillance for legitimate purposes only<sup>91</sup>
- **Restrictions** – limits to what data is collected and how it is used<sup>92</sup>
- **Consultation and consent** – requirements for consultation and consent as well as notification requirements that go beyond point in time obligations<sup>93</sup>
- **Disputes** – provisions for the resolution of disputes regarding workplace surveillance activities, such as via the Industrial Relations Commission.<sup>94</sup>

**2.35** Stakeholders also raised the broader issue of data collection and use, suggesting that improved regulation or management of this is required.<sup>95</sup> Mr Bernie Smith, Branch Secretary of the Shop, Distributive and Allied Employees' Association, expressed concerns about the fact that surveillance laws are now almost 20 years old and do not deal with the accrual of data generated

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<sup>89</sup> Submission 3, Centre for Responsible Technology, p 12.

<sup>90</sup> Submission 18, Public Service Association of New South Wales, pp 15-16; Submission 19, Shop, Distributive and Allied Employee's Association, p 4; Submission 28, Unions NSW, pp 48-49; Answers to questions on notice, Australian Manufacturing Workers' Union, 26 March 2021, p 1.

<sup>91</sup> Submission 16, Australian Rail Tram and Bus Industry Union, p 3; Submission 18, Public Service Association of New South Wales, p 15; Submission 19, Shop, Distributive and Allied Employee's Association, p 4; Submission 23, The Australian Workers' Union, p 10.

<sup>92</sup> Submission 16, Australian Rail Tram and Bus Industry Union, p 3; Submission 5, Centre for Future Work, p 19.

<sup>93</sup> Submission 18, Public Service Association of New South Wales, p 15; Submission 23, The Australian Workers' Union, p 10; Submission 5, Centre for Future Work, p 19; Submission 19, Shop, Distributive and Allied Employee's Association, p 4; Submission 28, Unions NSW, p 50.

<sup>94</sup> Submission 23, The Australian Workers' Union, p 10.

<sup>95</sup> See for example Submission 28, Unions NSW, p 50; Submission 6, United Workers Union, pp 8 & 11; Submission 19; Shop, Distributive and Allied Employee's Association, p 4; Evidence, Professor Walsh, 29 June 2022, pp 4-5; Evidence, Mr Lewis, 29 June 2022, p 7.

by employees. He explained that workplace surveillance is not just about what an employer can do with respect to video surveillance or listening surveillance, but that it is now about the data being collected by employers.<sup>96</sup>

**2.36** Unions NSW captured the aspects of data collection requiring greater visibility by workers and suggested all workplaces in New South Wales should be required to provide the below information to employees:

- the form and extent of data being created by workers
- how this data is collected
- how this data is being stored and where
- who is storing the data
- how this data can be accessed and by whom
- what purpose the collected data is being put to
- who benefits from the data.<sup>97</sup>

**2.37** A number of stakeholders were also of the view that employees deserve to derive some benefit from the use of the data they generate where it creates efficiencies or other gains for an employer.<sup>98</sup> These issues are canvassed more fully in following chapter on automation.

**2.38** However, these concerns were exacerbated by participants' observations of the widespread increase in unpaid work that has occurred in recent years. Mr Costa, Assistant Secretary, Unions NSW, advised that it is almost the norm now for employers not to pay their employees overtime. He expressed the views that where their behavioural data is being used to provide employers with productivity gains and efficiencies, it is time to compensate those workers and reduce their unpaid overtime.<sup>99</sup>

**2.39** Stakeholders provided the following additional comments about unpaid work:

- Professor Rae Cooper from the University of Sydney highlighted the impacts of COVID-19 and working from home arrangements on increases in unpaid work for men and women. She outlined that during the COVID-19 lockdown periods, women were shown to be doing considerably more unpaid work at home than men.<sup>100</sup>
- Dr Josh Healy identified that casualised, non-ongoing, non-permanent, temporary and third-party managed varieties of work lend themselves to employees performing considerable unpaid overtime because people feel insecure in their attachment to work.

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<sup>96</sup> Evidence, Mr Smith, 29 June 2022, p 23.

<sup>97</sup> Submission 28, Unions NSW, p 50.

<sup>98</sup> See for example Evidence, Mr Thomas Costa, Assistant Secretary, Unions NSW, 9 November 2020, p 16; Submission 3, Centre for Responsible Technology, p 16; Submission 3, Centre for Responsible Technology, pp 8 & 11; Submission 6, United Workers Union, pp 8 & 11; Submission 19; Shop, Distributive and Allied Employee's Association, p 11.

<sup>99</sup> Evidence, Mr Costa, 9 November 2020, pp 16-17.

<sup>100</sup> Evidence, Professor Rae Cooper, Professor of Gender, Work and Employment Relations, University of Sydney – Australian Women's Working Futures.

He added that the pandemic and the availability of technology has made that worse and caused an increase in unpaid work.<sup>101</sup>

- The United Workers' Union outlined that call centre staff were required to work from home during the pandemic and install software on their home computers in unpaid time. This caused additional friction to workers moving to work from home arrangements as their work was already highly surveilled.<sup>102</sup>
- The United Workers' Union also outlined the unpaid work performed by employees performing homecare roles stating that much of their administrative tasks are undertaken in their own time, unpaid.<sup>103</sup>
- Unions NSW called for the government to ban all unpaid overtime to assist in redistributing work to create other job opportunities.<sup>104</sup>

## Committee comment

**2.40** As in our first report, the committee was convinced by the evidence examined in this inquiry that there are a range of areas where greater action by government is required to better manage the way in which technology is being used in workplaces, specifically in respect of surveillance activities and automation. Our focus at this point is on workplace surveillance; we turn to the issue of automation in the following chapter.

### Workplace surveillance

**2.41** The committee was concerned by evidence relayed by inquiry participants that workplace surveillance activities are extending into the private lives of employees, breaching their privacy and creeping beyond stated intentions.

**2.42** We heard about surveillance activities in the home resulting from 'work from home' arrangements and app-based work. We heard about surveillance undertaken for workplace health and safety reasons being used to discipline workers. We also heard about increased anxiety amongst workers feeling the effects of constant surveillance.

**2.43** While the committee noted the views of industry representatives that the existing workplace surveillance laws are sufficient to account for new and emerging technologies, we conclude that these laws have not kept pace with advancements and that workers' protections are diminished as a result. In this regard, the *Workplace Surveillance Act* is approaching 20 years old and was developed at a time when many of the technologies used in workplaces today were inconceivable. It is the combination of these new technologies with the changing nature of work – along with the evidence we have received about the range of impacts and implications for employees – that convinces the committee that a comprehensive update of existing laws is not only warranted but critical to protecting the rights of workers now and into the future.

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<sup>101</sup> Evidence, Dr Josh Healy, Senior Lecturer in Employment Relations, The University of Newcastle, 29 June 2022, p 19.

<sup>102</sup> Submission 6, United Workers' Union, p 34.

<sup>103</sup> Submission 6, United Workers' Union, pp 49 & 53.

<sup>104</sup> Submission 28, Unions NSW, p 40.

- 2.44** The update should address the issues canvassed in this report and include consideration of whether the policy settings underpinning existing laws remain appropriate in a contemporary context. The update should also be guided by an overarching principle for the rights of workers to be protected – including that they have a genuine say in what data is collected and how it is used, consent processes and dispute resolution mechanisms.
- 2.45** The committee further recommends the legislative update occur in consultation with workers, unions, industry and experts to ensure a comprehensive understanding of contemporary workplace surveillance practices. This will also help to ensure that the impact of new and emerging technologies is accounted for.
- 2.46** Based on the evidence gathered in the inquiry, the committee also recommends that the NSW Government establish a best practice framework to guide workplaces when undertaking surveillance measures. This guide should address the issues outlined in this report including information to be given to employees about data collection and use, consultation and consent, disputes, and restrictions to workplace surveillance activities.
- 2.47** The committee is of the view that there is a need for immediate legislative action to address the clear evidence received by the committee and modernise the legislation. Section 10 merely requires an employer to notify employees of proposed surveillance. There is no mechanism in the legislation for this to be negotiated, nor or any ability for it to be challenged. The same applies to the additional notifications required by sections 11 and 13. The regulation of computer tracking in section 12 only requires that this be done in accordance with an employer’s policy and that the policy has been notified to employees. Again, there is no legislative mechanism for employee involvement or the ability for workers to oppose what is being put forward by the employer.
- 2.48** At the federal level, the Parliamentary Joint Committee on Intelligence and Security’s (PJCIS) unanimous report on the Identity-matching Services Bill 2019 gave advice about how that bill should be reshaped to protect human rights (especially privacy) more effectively in this area.<sup>105</sup> Drawing on the recommendations in the PJCIS report, the committee recommends that NSW workplace surveillance legislation be amended to:
- strengthen privacy law protections as a counterweight to the growth of privacy intrusive technology (for example facial recognition), particularly as it is used in workplaces
  - provide for a legal requirement that any intrusion on privacy or other non-absolute human rights caused by workplace surveillance technology must be reasonable, necessary and proportionate (per international law)
  - provide that where automation is used in the workplace surveillance context, or more broadly in ways that affect worker’s rights and entitlements, this be subject to the advice set out by the Commonwealth and NSW Ombudsman Offices and the Australian Human Rights Commission in its 2021 *Human Rights & Technology Report*

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<sup>105</sup> Parliamentary Joint Committee on Intelligence and Security, *Review of Identity-Matching Services Bill 2019 and the Australian Passports Amendment (Identity-matching Services) Bill 2019*, October 2019, p iii. Advisory report on the Identity-matching Services Bill 2019 and the Australian Passports Amendment (Identity-matching Services) Bill 2019 (aph.gov.au).

- establish additional legal requirements to ensure that any workplace surveillance technology is fair, accurate, accountable and does not intrude more than is absolutely necessary on human rights.

**2.49** Noting the content of paragraphs 2.33, 2.34, 2.36 and 2.48 above, the committee recommends that the legislation should immediately be amended to require that all workplace surveillance must be permitted only if it is reasonable, necessary and proportionate, fair, accurate, accountable and does not intrude more than is absolutely necessary on the privacy of workers. Workplace surveillance must also only be carried out if an application has been made by the employer and permitted by a magistrate. Further, that any application must specify:

- the surveillance to be carried out and the way in which it is to be done
- what data or information is to be collected
- how this is to be collected and stored
- where the information is to be stored and by whom
- how the data is to be accessed and by whom
- the purpose(s) to which the collected data may be put, including whether and how it is to be monetized by the employer (such as sale to third parties or use in automation) and
- who benefits from the data/information collected.

**2.50** The committee further considers that, notification of any application must be required to be provided to affected workers and their union(s), with a reasonable period given for them to respond. There should also be included in the legislation a mechanism for discussion between the employer and its affected workforce and their union(s), including for conciliation. In the event that no agreement is reached, there should be opportunity in the hearing of any application by an employer for the affected workers and their union(s) to appear and be heard. The court should be empowered to refuse applications or to craft approvals, in whole or part, as appropriate given the evidence before it.

**2.51** An appropriate regime for securing compliance, including penalties for acting without authorisation or breaching conditions, should also be included.

**2.52** The committee considers that the matters referred to in paragraph 2.34 should be built into these legislative changes, to ensure modern and appropriate definitions are used, that approvals be limited to legitimate purposes only (to be defined in the legislation), that consultation requirements with the affected employees and union(s) be clearly set out, and that any disputes concerning an approved or proposed surveillance be able to be dealt with by a competent authority, whether the court or the Industrial Relations Commission.

**2.53** In addition to limitations in the law itself, there is also an ‘institutional’ problem. There is no existing NSW Government agency/regulator that has oversight over these issues. While the NSW Information & Privacy Commission, the Ombudsman and SafeWork NSW, among others, have some focus on these issues, none has a clear remit or responsibility to ensure that the above issues are effectively dealt with. The AHRC proposed the creation of an Artificial

Intelligence Safety Commissioner. It would make sense for there to be a similar body at the state level, which the committee also recommends.

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### **Recommendation 1**

That the NSW Government update the *Workplace Surveillance Act 2005* to take account of contemporary workplace surveillance activities and advancements in technologies.

### **Recommendation 2**

That the NSW Government build into these laws clear privacy protections for workers, consultation and consent requirements and dispute resolution processes, and:

- clarify that the law applies to surveillance of all work done in New South Wales regardless of whether the surveillance occurs in New South Wales or another jurisdiction
- provide clear protection for freedom of association.

### **Recommendation 3**

That the NSW Government undertake extensive consultation with workers, unions, business groups and experts to inform the legislative amendment.

### **Recommendation 4**

That the NSW Government develop a best practice framework to guide the use of workplace surveillance measures in workplaces in New South Wales.

### **Recommendation 5**

That the NSW Government consider amending workplace surveillance laws to require external approval prior to an employer undertaking or implementing workplace surveillance measures and for the magistrate to have conciliation powers. An application must detail:

- the surveillance to be carried out and the way in which it is to be done
- what data or information is to be collected
- how this is to be collected and stored
- where the information is to be stored and by whom
- how the data is to be accessed and by whom
- the purpose(s) to which the collected data may be put, including whether and how it is to be monetized by the employer (such as sale to third parties or use in automation) and
- who benefits from the data/information collected
- how this information is to be retained or destroyed.

### **Recommendation 6**

That the NSW Government amend workplace surveillance laws to enhance notification requirements such that employers must provide reasonable response timeframes and establish processes for employees to negotiate and oppose proposed surveillance activities.

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### **Increases in unpaid work – wage theft on a massive scale**

- 2.54** In 2015 the economics writer for *The Sydney Morning Herald*, Jessica Irvine, wrote that if workers spent only 10 minutes a day outside of work hours checking their emails, they would in theory earn themselves the equivalent of an additional week of annual holidays.<sup>106</sup> Even then, Australian workers performed significantly more work outside of work hours, often at home or during their commute, without additional remuneration or any form of recognition, such as additional leave entitlements. Things have deteriorated in the last six years.
- 2.55** A report in November 2019 from the Australia Institute's *Centre for Future Work* demonstrated that Australians were working almost five hours of unpaid work a week, which for a worker is more than six weeks of unpaid work a year. The report estimated that in 2019 some 2.4 billion hours of unpaid overtime was worked—worth a total of \$81.5 billion.<sup>107</sup> The Australia Institute's report from November 2020 found that the situation had worsened in the following twelve months, with Australia's workforce not paid overtime of 2.9 billion hours a year, an annual average of 273 hours or seven weeks of unpaid overtime completed per year per worker.<sup>108</sup> In 2020, unpaid overtime represented a collective income loss of \$98.6 billion for Australian workers, approximately three times the spend on JobSeeker.
- 2.56** In the committee's view this is a huge productivity dividend to employers and can be seen as wage theft on a massive scale. Not only are individuals and families missing out on personal and family time, this situation is harming the economy.

### **The right to disconnect**

- 2.57** The barriers between our homes and our workplaces are rapidly blurring. With technological developments workers are now much more accessible to their employers after hours than ever before. There has been an intensification of work, which has been exacerbated by the COVID-19 pandemic. Working from home at more frequent rates, the onset of digital surveillance of employees, and increasing work insecurity across industries are significant contributors to the intensification of work. Working unpaid hours has also, unfortunately, become a common trait in our workforce coming at a cost to both our workers and the wider economy. It is evident that our industrial relations system has not kept pace with the transformation in our working lives.
- 2.58** One answer that is being proposed by both workers and governments is the *right to disconnect*: a right for workers to not have work devices on or be expected to respond to them outside of the workplace or agreed work hours.
- 2.59** In Australia, both the Australian Council of Trade Unions (ACTU) and Unions NSW have asserted that workers should have a right to disconnect. The ACTU working from home survey

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<sup>106</sup> Jessica Irvine, 'Here's why Australians should get five weeks of annual leave', *Sydney Morning Herald*, 2 October 2025, <https://www.smh.com.au/opinion/heres-why-australians-should-get-five-weeks-of-annual-leave-20151001-gjz91m.html>.

<sup>107</sup> Bill Brown, *Excessive hours and unpaid overtime: 2019 update*, Centre for Future Work at the Australia Institute (2019), p 5.

<sup>108</sup> Dan Nahum, *Work and life in a pandemic: An update on hours of work and unpaid overtime under COVID-19*, The Centre for Future Work at the Australia Institute (2020), p 33.



published in November 2020<sup>109</sup> demonstrated that 40 per cent of workers are working longer hours and 90 per cent are not being paid overtime or penalty rates. Unfortunately, the survey also reveals that 49 per cent of home workers are experiencing mental health issues and 48 per cent are having difficulty separating work and home life. It is essential that there is a way of reinforcing the distinction between work and non-work hours as there is a significant risk to the mental health of workers, to say nothing of encroachment on personal and family time.

- 2.60** The notion of a right to disconnect is gaining traction. The Police Association of Victoria recently secured the right to disconnect for an estimated 17,000 police officers through its enterprise bargaining agreement. It essentially prevents superiors contacting members of the police force outside of work hours with the exception of emergencies. For officers below a certain rank there is an availability allowance for each hour they are required to be contactable when they are off duty.
- 2.61** Globally, the movement for the right to disconnect has also been securing momentum. In 2017 France became the first country to pass legislation giving workers the right to disconnect, requiring that companies with more than 50 employees enact a charter enforcing that right. In 2018, legislation enshrining the right to digital disconnection was enacted in Spain. In January 2020, the European Union Parliament voted for a motion calling on the European Union Commission to put forward legislation permitting employees to digitally disconnect outside their work hours. In April 2020, a new code of practice came into effect in Ireland giving workers the right to disconnect. The government there argued that it is essential that employees have a right to switch off after work hours. The Canadian Government is also examining a comparable policy.
- 2.62** Excessive work is unsafe and damaging to workers health and safety. The committee heard that much of the impact of work intensification and its effects are being borne by women workers.<sup>110</sup> The notion that there should be a clear boundary separating work and home hours at some point and that people should have the right to switch at that point should not be remarkable.
- 2.63** State work health and safety laws and State anti-discrimination laws are not overridden by Commonwealth industrial relations laws.<sup>111</sup> They continue to perform their important work and could be used here to legislate to provide limits on excessive or unreasonable work times and the performing of duties outside of paid-for working time and to ensure that, to the extent workers do so, they are provided with additional paid leave entitlements, to protect physical and mental wellbeing and safety put at risk from excessive workloads. The reforms would be grounded in the very purpose for which WHS laws were created: the keep workers and the public safe and healthy.

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<sup>109</sup> Australian Unions, *Working from home: Survey report* (2020), Australian Council of Trade Unions, p 2, <https://www.actu.org.au/our-work/policies-publications-submissions/2020/working-from-home-survey-report>.

<sup>110</sup> See for example, Submission 19, Shop, Distributive and Allied Employees Association.

<sup>111</sup> See *Fair Work Act* 2009 (Cth), ss26, 27.

2.64 The committee recommends legislative change to provide a:

- *right to refuse* excessive or unreasonable<sup>112</sup> workloads or intrusions into personal and family time outside of agreed or contracted work times
- *right to rest* in the form additional paid leave, commensurate with hours worked in excess of a determined *reasonable limit*
- *right to disconnect* from work devices and the obligation to respond to work communications, for set periods of time outside of work hours. This would of course be subject to the need for *'on call'* arrangements or *bona fide* emergencies. Presently, what was once the occasional out of hours call or email has now become a regular feature of almost all office/computer-based work
- right for registered organisations to inspect any software, platforms, code, algorithms and/or apps used to allocate work and set workloads.

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### Recommendation 7

That the NSW Government consider amending work health and safety and other laws to address the growing concerns surrounding work intensification, expressly providing to workers:

- the right to refuse excessive or unreasonable workloads or intrusions into personal and family time.
  - the right to rest in the form additional leave, commensurate with hours worked in excess of a determined reasonable limit
  - the right to disconnect from work devices and the obligation to respond to work communications, for set periods of time outside of work hours
  - a right for registered organisations to inspect software/platforms/code/algorithms/apps used to allocate work and set workloads.
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<sup>112</sup> This is an important qualifier and a necessary one, given the provisions of the *Fair Work Act* regarding workers performing *reasonable additional hours*: see s62(1) and (2).

## Chapter 3 Workplace automation

Advancements in technology have created enormous opportunity to automate many aspects of human labour in workplaces across New South Wales. The committee heard that this has been compounded by changes in the way we work, most significantly since the COVID-19 pandemic.

According to stakeholders, automation has impacted workplaces in both positive and negative ways. It has changed the nature of work. It has replaced some jobs, changed others and created challenges for the way in which automation is managed into the future. The impact of these developments on workers is the central issue explored in this chapter and underpins suggestions from stakeholders for future management of workplace automation in New South Wales.

This chapter commences by outlining the way in which automation has impacted on our workplaces. It then details views about management of workplace automation into the future with a particular focus on government leadership and regulation including via the public sector as a model employer, industry plans, consultation and engagement with employees, benefits to employees, training and skill development, and redundancy, re-deployment and compensation.

### Impact of automation

- 3.1 Stakeholders identified a range of impacts as a result of workplace automation. This section details these impacts, which include the benefits and opportunities created; job losses; changing nature of roles; effects on particular roles, industries and regions and biases built into automation.
- 3.2 Unions NSW highlighted to the committee that workplace automation is not a new phenomenon and is, in fact, inevitable.<sup>113</sup> A number of stakeholders referred to this particular period of workplace change as the fourth phase of the industrial revolution;<sup>114</sup> being the 'convergence of numerous, mutually enabling technologies' and the 'dramatic increase in the processing power of computers that has occurred over the last 50 years'.<sup>115</sup>
- 3.3 While workplace automation is not new, it was commonly acknowledged that the COVID-19 pandemic resulted in an increase in automation in some areas. There was an increase in the number of people working from home and accessing workplace technologies from within their home, as well as an increase of people engaging in work through the gig economy and apps.<sup>116</sup> There was also a significant increase in the use of 'on demand' work – not just limited to food delivery but also in other areas like disability services and teaching.<sup>117</sup> This, along with the rise

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<sup>113</sup> Submission 28, Unions NSW, p 35.

<sup>114</sup> See for example Submission 9, Dr Eugene Schofield-Georgeson, p 5; Submission 28, Unions NSW, p 4; Submission 37, The McKell Institute, attachment 1, p 10.

<sup>115</sup> Dr Josh Healy, Senior Lecturer in Employment Relations, The University of Newcastle, 29 June 2022, p 7.

<sup>116</sup> See for example Evidence, Mr Peter Dunphy, Executive Director, Compliance and Dispute Resolution, SafeWork NSW, 16 November 2020, p 46; Evidence, Mr Thomas Costa, Assistant Secretary, Unions NSW, 9 November 2020, p 20; Evidence, Dr Healy, 29 June 2022, pp 13-14.

<sup>117</sup> Evidence, Mr Mark Morey, Secretary, Unions NSW, 9 November 2020, p 15; Evidence, Mr Wes Lambert, Chief Executive Officer, Restaurant and Catering Industry Association, 23 February 2021,

of algorithms now responsible for tasks and decisions that were previously the domain of managers – and the concomitant impacts on the experience and conditions of workers – was explored in detail in our first report.

**3.4** Beyond the pandemic, stakeholders were in agreement that automation and technological advancement will continue to impact the workforce in New South Wales. They expressed a range of views about the impact of automation, including benefits that it can bring to employees, the economy and the society. Views about positive impacts included:

- The Australian Industry Group expressed that 'digital transformation will create new markets and new jobs and some existing jobs will be re-designed.' It explained that it is the foundation of growth in economic productivity and that it 'underpins rises in incomes and living standards for the whole community over time'.<sup>118</sup>
- The Australian Industry Group's Mr Stephen Smith added to this that 'digital technologies will enable businesses to innovate, grow, improve their productivity and remain competitive in an increasingly global marketplace'.<sup>119</sup>
- Dr Joshua Healy, Senior Lecturer in Employment Relations at The University of Newcastle, pointed to history as an indicator that the process of economic development is surprisingly effective at 'generating sufficient new jobs, in unfamiliar fields, to maintain high levels of aggregate employment in the long term'.<sup>120</sup>
- The Centre for Future Work suggested that 'the ongoing process of technological and economic development presents society with key options and choices regarding how the benefits of technology should be realised'. It added that technological progress 'can support a higher material standard of living, reflected in higher incomes and higher rates of consumption'.<sup>121</sup>

**3.5** Inquiry participants also discussed concerns about the impact of automation on job loss and their views were varied. Some considered automation to pose a significant threat to existing jobs,<sup>122</sup> whereas others were less concerned about mass job loss.<sup>123</sup>

**3.6** The variation in future predictions of job loss was highlighted by The McKell Institute, which pointed to comprehensive analysis undertaken by research firms regarding the potential effect of automation on future job risk. The McKell Institute noted that these firms have all come up with very different estimates, as displayed in the table below:

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p 7; Evidence, Mr Thomas Green, Head of Policy, Government and Public Affairs, Restaurant and Catering Industry Association, 23 February 2021, p 10.

<sup>118</sup> Tabled document, Australian Industry Group, Submission, 27 June 2022, p 8.

<sup>119</sup> Evidence, Mr Stephen Smith, Head, National Workplace Relations Policy, Australian Industry Group, 16 November 2020, p 23.

<sup>120</sup> Answers to questions on notice, Dr Healy, 29 June 2022, p 3.

<sup>121</sup> Submission 5, Centre for Future Work, p 5.

<sup>122</sup> See for example Submission 9, Dr Eugene Schofield-Georgeson, attachment 1, pp 3-4; Submission 28, Unions NSW, p 34; Submission 44, Forrester Research Inc, p 2; Submission 5, Centre for Future Work, p 1.

<sup>123</sup> See for example Submission 5, Centre for Future Work, p 21; Answers to questions on notice, Dr Josh Healy, Senior Lecturer in Employment Relations, The University of Newcastle, 29 June 2022, p 3; Tabled document, Australian Industry Group, Submission, 27 June 2022, pp 8-9.

**TABLE 2.3** VARIOUS ESTIMATES OF JOB LOSSES IN THE AUSTRALIAN LABOUR MARKET.

	TOTAL ESTIMATED JOB LOSS	TOTAL PERCENTAGE JOB LOSS	TIMEFRAME
McKinsey	3.5 - 6 million	46 per cent	2020-2030
CEDA	5 Million	40 per cent	10-15 years after 2015
Adzuna	Unspecified	-33 per cent	12 years to 2030
Finder	3.04 million	-25-30 per cent	To 2030
Borland and Coelli	Unspecified	9 per cent	2017-2030

*The McKell Institute, Opportunities in Change: Responding to the Future of Work, p 36.*

**3.7** In respect of these varied predictions, The McKell Institute said that even at the lowest prediction of job loss percentages, the numbers are nevertheless significant and likely to impact on parts of the community:

This is, of course, still a very large number of people in the Australian labour market, and if concentrated amongst particular geographic, demographic and socioeconomic groups will cause considerable distress and anxiety.<sup>124</sup>

**3.8** While job loss was considered a real risk by some, many inquiry participants agreed that workplace automation is also likely to result in jobs changing and new jobs being created. The Centre for Future Work stated that 'some jobs will be eliminated, some jobs will be changed, and some jobs will be created'.<sup>125</sup> Similarly, the Australian Industry Group observed 'automation is leading to reallocations of employment between roles, tasks, sectors and regions'.<sup>126</sup>

**3.9** A number of inquiry participants discussed that automation is likely to impact some industries and roles more than others. They outlined that roles requiring skills such as social intelligence, creativity and an ability to work in complex and unstructured environments, will be less impacted.<sup>127</sup> Forrester Research Inc observed that 'human-touch workers, cross-domain knowledge workers, digital elites, and teachers and other "explainers" are best positioned for job security'.<sup>128</sup>

**3.10** This sentiment was echoed by Ms Carmel Pelunsky, Director of Talent and Future of Work with Woolworths, who said that automation will impact manual and repetitive tasks such that, into the future, employees will need to perform more tasks that require judgement, creativity and interpersonal skills:

Technological advances ... change the fundamental nature of the day-to-day work many of our team do, and over time we know that our team members will do fewer manual

<sup>124</sup> Submission 37, The McKell Institute, attachment 1, p 36.

<sup>125</sup> Submission 5, Centre for Future Work, p 21.

<sup>126</sup> Tabled document, Australian Industry Group, Submission, 27 June 2022, p 9.

<sup>127</sup> See for example Submission 37, The McKell Institute, attachment 1, p 21; Submission 5, Centre for Future Work, p 6; Answers to questions on notice, Dr Healy, 29 June 2022, pp 3-4; Tabled document, Australian Industry Group, Submission, 27 June 2022, p 9.

<sup>128</sup> Submission 44, Forrester Research Inc, p 1.

and repetitive tasks and more work that requires judgement, creativity and interpersonal skill.<sup>129</sup>

- 3.11** Although many agreed that automation would impact certain roles more than others, the Centre for Future Work submitted that enhanced computing power will see automation of jobs and roles not previously considered to be at risk, which will have greater impacts on employment:

New applications of computing power, in contrast, are allowing the automation of non-routine tasks. Thus the scope of automation is extending ... to include non-routine tasks that require judgment, flexibility, and decision-making capacity, even in non-controllable or unpredictable environments. ... Since machine learning and other new computing capacities allow a wider range of tasks to be computerised, the potential impacts on employment will be magnified.<sup>130</sup>

- 3.12** The Public Service Association of New South Wales identified government services as an area where automation may be possible but could be fraught. It explained that automation is intended to deliver efficiencies by removing people and replacing them with machines or automated processes. However, it discussed the 'Robodebt' example as one where the removal of the human element resulted in terrible consequences for citizens. In this instance, it explained, the algorithm was designed to assess someone's income and determine whether they owed money to Centrelink or vice versa. The Public Service Association explained the result and the cost to the customers:

Instead of detecting overpayments, it radically over-estimated them and invoiced citizens. There was no saving, significant administrative burden and an appalling human cost to those who wrongly received debt notices.<sup>131</sup>

- 3.13** In addition to the risk posed by automation to specific roles or skill sets, some inquiry participants also highlighted the potential for disproportionate impacts in regional communities.<sup>132</sup> The Australian Manufacturing Workers' Union outlined that the regions employ 30 per cent of the manufacturing industry, making the industry the 'life blood of many regional communities'. It expressed concern that because the manufacturing industry is 'at the forefront of the changes brought by innovation and automation' these workers' rights and future jobs are at particular risk.<sup>133</sup>

- 3.14** Bias was another concern raised by stakeholders when discussing the impact of automation in the workplace, with some expressing concern about the way in which unconscious preferences or broader societal biases are built into automation and the unintended consequences this may have on workers.<sup>134</sup> Professor Leah Ruppner, Professor of Sociology and Founding Director

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<sup>129</sup> Evidence, Ms Carmel Pelunsky, Director, Talent and Future of Work, Woolworths Group, Woolworths Group, 19 April 2021, p 2.

<sup>130</sup> Submission 5, Centre for Future Work, p 6.

<sup>131</sup> Submission 18, Public Service Association, pp 11-12.

<sup>132</sup> See for example Submission 19, Shop, Distributive and allied employees' Association, pp 13-14; Submission 28, Unions NSW, p 36; Submission 30, Transport Workers' Union, p 63; Submission 37, The McKell Institute, attachment 1, p 18.

<sup>133</sup> Submission 12, Australian Manufacturing Workers' Union, p 2.

<sup>134</sup> See for example Evidence, Mr Bernie Smith, Branch Secretary, Shop, Distributive and Allied Employees' Association, 29 June 2022, p 22; Professor Mark Andrejevic, Professor, Communication

of The Future of Work Lab at the University of Melbourne, explained that in her research, they are finding multiple modes in which bias gets introduced into technology:

There is biased data that machine learning utilises, so all the algorithms that are being built are using data that usually captures the world in which we live, and we all know that the world in which we live is biased. So it's not a surprise when algorithms reflect back to you what we are. ... We were finding that humans have unconscious bias that gets built into the tech, the data is biased and then the application itself can be biased in the outcome.<sup>135</sup>

**3.15** The Centre for Responsible Technology reported that bias is evident in recruitment as 'hiring algorithms tend to reproduce past patterns of discrimination' and provided an example of a resume screening system developed by Amazon which 'rapidly identified a gender bias'.<sup>136</sup>

**3.16** Biases in recruitment was also highlighted by Professor David Peetz who described the way in which bias can play out in recruitment algorithms:

An organisation might decide to automate parts of its recruitment and selection process, by using an artificial intelligence (AI) capability. A common way AI is deployed here is to 'train' it by feeding it CVs of successful and unsuccessful applicants from previous selection rounds. Rather than removing subjectivity, this often leads to previous biases being systematically reproduced but much harder to overcome because of the aura of objectivity and the opaqueness of code.<sup>137</sup>

## Managing workplace automation into the future

**3.17** Stakeholders expressed a range of concerns about the impact of workplace automation. Underpinning the majority of these concerns was an agreement that action is required to manage the impact of automation on the future workforce in New South Wales.<sup>138</sup>

**3.18** An overarching theme arising during the inquiry was that in an era where increased automation is inevitable, it is important that the human element in workplaces is not lost.<sup>139</sup> Some examples of these concerns included that:

- Humans need to remain accountable for the decisions and outcomes of algorithms.<sup>140</sup>

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and Media Studies, Monash Data Futures Institute, 29 June 2022, p 4; Submission 17, Professor David Peetz, attachment B, p 1.

<sup>135</sup> Evidence, Professor Leah Ruppner, Professor of Sociology and Founding Director of The Future of Work Lab at the University of Melbourne, 29 June 2022, p 14.

<sup>136</sup> Submission 3, Centre for Responsible Technology, p 8.

<sup>137</sup> Submission 17, Professor David Peetz, attachment B, p 1.

<sup>138</sup> See for example Submission 5, Centre for Future Work, p 18.

<sup>139</sup> See for example Evidence, Mr Peter Lewis, Director, Centre for Responsible Technology, The Australia Institute, 29 June 2022, p 7.

<sup>140</sup> Professor Toby Walsh, Laureate Fellow and Scientia Professor of Artificial Intelligence, University of New South Wales, 29 June 2022, p 10.

- The human cost of automation can be significant, with job loss and the impacts that flow from this.<sup>141</sup>
- Automated performance standards that do not account for unpredictable factors associated with the human nature of performing work including fatigue, interactions with colleagues and customers and toilet breaks.<sup>142</sup>
- Automated processes to engage and manage performance in the workplace are dehumanising.<sup>143</sup>

**3.19** A number of stakeholders expressed that technology does not need to just happen to us, but that it should be guided by deliberate decisions and planning on the part of government and broader society. Examples of these views include:

- Dr Healy expressed that 'Australian policy makers have choices about how, and how quickly, technology's effects are felt'. He explained that 'while the pace of change can be confronting, technological progress is not something 'happening to us', but a process under our control'.<sup>144</sup>
- The Centre for Future Work outlined that we must choose 'how technology is managed, to protect labour standards in the face of technological and organisational innovations, to reduce working hours over time to enhance workers' quality of life, to prohibit abusive and intrusive misuses of technology, and more'.<sup>145</sup>
- Mr Peter Lewis from the Centre for Responsible Technology explained that we should consider how we can use technology, 'not just accepting that technology happens to us'. He believes that we can shape it in a way that 'respects the needs of employers to run profitable businesses but also respects the rights of employees'.<sup>146</sup>
- Unions NSW submitted that 'preparedness for the uncertainty ahead is essential to ensure these changes – irrespective of pace or scale – do not diminish the pay, working conditions and personal wellbeing of workers, their families and communities'.<sup>147</sup>
- The Australian Workers' Union believes that 'the default position taken by Australian government appears has been one of 'non-interference', treating technological innovation as best left to the free market'.<sup>148</sup>

**3.20** These concerns were echoed by Professor Ruppanner, who expressed the view that if government is not acting, tech companies will determine the future of workplace automation:

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<sup>141</sup> Submission 18, Public Service Association of New South Wales, p 12.

<sup>142</sup> Submission 19, Shop, Distributive, and Allied Employee's Association, p 8 and Submission 30, Transport Workers' Union, p 56.

<sup>143</sup> Evidence, Mr Smith, 19 April 2021, p 15.

<sup>144</sup> Answers to questions on notice, Dr Healy, 29 June 2022, p 3.

<sup>145</sup> Submission 5, Centre for Future Work, p 22.

<sup>146</sup> Evidence, Mr Lewis, 29 June 2022, p 10.

<sup>147</sup> Submission, Unions NWS, p 4.

<sup>148</sup> Submission 23, The Australian Workers' Union, p 3.



In the absence of government—in the void of inaction, actually, what you end up having is tech who is the owner, and the policymaker, and the developer...<sup>149</sup>

- 3.21** This sentiment underpinned stakeholders' views about what is needed to manage workplace automation into the future. That is, stakeholders identified key areas where industry and government should act to better manage workplace automation into the future. These key areas are addressed below.

### **Government leadership and regulation**

- 3.22** There was broad consensus from stakeholders that government must provide leadership and set parameters regarding automation and digital technologies in New South Wales workplaces.<sup>150</sup>
- 3.23** The Centre for Work pointed to the broader political context which in its view has enabled employers to introduce technology into workplaces that serves their own interests while undermining the position of workers. It explained the impact of recent economic, political and social policies on workers facing technological change in the workplace:

In the realm of technology, we cannot understand the one-sided impacts of recent technological changes without understanding the pro-business shifts in the broader economic and political landscape. And hence we cannot hope to win a more balanced and worker-friendly vision of technology and innovation, without confronting the overall neoliberal direction of economic, political, and social policies.<sup>151</sup>

- 3.24** On a more micro level, Dr Eugene Schofield-Georgeson outlined that governments are empowered to change technological directions and that it is the role of government to protect the interests of citizens:

... if robots and computers threaten our very survival then ... it is the role of the state to create a legal framework that advances the overall interests of citizens.<sup>152</sup>

- 3.25** His submission compared such protections to speed limits introduced by governments to protect people from vehicles that can 'drive dangerously fast'. Dr Schofield-Georgeson expressed that '... meeting the challenge of automation begins by restoring, reforming and advancing law that regulates the replacement of labour by automating technologies'.<sup>153</sup>

- 3.26** Ms Claire Pullen from the Public Service Association supported the notion that it is up to government to protect the rights of citizens and to make sure laws are adequate for the technological advancements. She proposed that to achieve this, government should:

- set benchmarks against which private industry measures itself

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<sup>149</sup> Evidence, Professor Ruppner, 29 June 2022, p 21.

<sup>150</sup> See for example Submission 37, The McKell Institute, p 1; Submission 18, Public Service Association of New South Wales, p 18; Evidence, Dr Healy, 29 June 2022, p 21; Evidence, Mr Michael Buckland, Chief Executive Officer, The McKell Institute, 17 May 2021, p 39; Submission 30, Transport Workers' Union, p 78; Submission 28, Unions NSW, p 35.

<sup>151</sup> Submission 5, Centre for Future Work, p 12.

<sup>152</sup> Submission 9, Dr Eugene Schofield-Georgeson, attachment 1, p 7.

<sup>153</sup> Submission 9, Dr Eugene Schofield-Georgeson, attachment 1, p 7.

- ensure that workers have dignity and fair conditions of work and to make sure that laws can cope with technological change
- safeguard the rights of citizens and establish a framework for citizens' rights.<sup>154</sup>

**3.27** In this regard, a number of stakeholders expressed that existing workplace laws have not kept pace with technological advancements and require review to better protect employees from the impact of automation.<sup>155</sup>

**3.28** The McKell Institute outlined the OECD's key priorities for governments in responding to the changing nature of work:

- prepare young people for jobs of the future
- design labour market institutions that allow employers to seize the opportunities offered by technological change and globalisation, while making sure the risks are not borne disproportionately by workers
- re-think social security programs, ensuring people don't slip through the cracks between often antiquated government programs
- identify ways to transition workers displaced by automation to new occupations
- promote new forms of social dialogue.<sup>156</sup>

**3.29** In addition to the OECD's key priorities, the committee heard about progress in other countries around the world grappling with these same issues. Germany's *Work 4.0* strategy, discussed in more detail below, was highlighted as an exemplar in planning, consultation and training needs.<sup>157</sup> The committee also noted Spain's establishment of a supervisory authority to monitor and reduce the risks associated with artificial intelligence. This commitment recognises the need to promote and maximise the use of artificial intelligence while at the same time managing the risks posed to citizens.<sup>158</sup>

**3.30** Dr Healy from the University of Newcastle discussed the opportunities for government and employees that can be derived from technology including that government's regulatory enforcement powers can be bolstered by the use of technologies and these technologies can assist with compliance and enforcement of minimum employment standards.<sup>159</sup>

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<sup>154</sup> Evidence, Ms Claire Pullen, Project Officer, Public Service Association of New South Wales, 23 February 2021, p 32.

<sup>155</sup> See for example Submission 5, Centre for Future Work, p 9; Submission 19, Shop, Distributive and Allied Employee's Association, p 12; Submission 30, Transport Workers' Union, p 60.

<sup>156</sup> Submission 37, The McKell Institute, attachment 1, p 56.

<sup>157</sup> Submission 37, The McKell Institute, p 1.

<sup>158</sup> Hogan Lovells, *Spain to create Europe's first supervisory agency for artificial intelligence*, 13 January 2022.

<sup>159</sup> Evidence, Dr Healy, 29 June 2022, pp 12-13.

### *The NSW public sector as a model employer*

**3.31** Some stakeholders also called for government, industry and unions to work together to shape the future of technological advancement in workplaces.<sup>160</sup> However there was also recognition of the complexity of the task to adequately plan for technological advancement across such a varied array of sectors and industries. In this regard, some stakeholders identified that NSW Government could lead the way, being a model employer and providing best practice on managing automation its workplaces.<sup>161</sup>

**3.32** Mr Peter Lewis from the Centre for Responsible Technology proposed that the NSW Government be a model employer; providing leadership and best practice to others on how to manage workplace automation well:

I do think an area like the New South Wales public service would be an excellent place to start thinking through what some of those structures could look like. ... it is not just about setting laws; it is also about setting rules. There is a real opportunity, I think, for New South Wales as ... the largest employer in the State, to embrace best practice to lead the rest of the State and the State's employers on how we can do this well.<sup>162</sup>

**3.33** His Centre provided detailed submissions regarding how the Government could lead on this and use its position to 'influence policy to achieve a more balanced and beneficial vision of a high-tech economy'. The Centre identified that in respect of managing automation in the workplace, the government could establish best practice and lead by example in ensuring protections for workers, facilitating mobility, establishing benchmarks for skills and qualifications, facilitating decent retirement, negotiating technological change, regulating electronic monitoring and discipline, and reducing working hours. Many of these ideas are outlined below.<sup>163</sup>

**3.34** Similarly, the Public Service Association, also pointed to the NSW Government has having a key leadership role and to set best practice standards in managing technological change:

NSW Government has unparalleled procurement power and can be the national leader in best-practice in employment in its approach to technological change. In our submission, NSW Government should employ, adopt and procure with this in mind.<sup>164</sup>

### **Industry plans**

**3.35** A number of inquiry participants identified the need for industry to plan for automation and the impact on the future of their workforces.<sup>165</sup> The Forrester Research Inc identified that one of the biggest challenges faced by firms that are implementing automation technologies in the

<sup>160</sup> Submission 23, The Australian Workers' Union, p 3; Submission 28, Unions NSW, p 6; Submission 37, The McKell Institute, attachment 1, p 63 and attachment 2, p 4.

<sup>161</sup> See for example Submission 9, Dr Eugene Schofield-Georgeson, p 2; Evidence, Mr Lewis, 29 June 2022, pp 3, 7 & 8; Submission 18, The Public Service Association of New South Wales, p 8.

<sup>162</sup> Evidence, Mr Lewis, 29 June 2022, pp 3, 7 & 8.

<sup>163</sup> Submission 5, Centre for Responsible Technology, pp 18-20.

<sup>164</sup> Submission 18, The Public Service Association of New South Wales, p 8.

<sup>165</sup> See for example Submission 37, The McKell Institute, p 1; Evidence, Ms Chloe Smith, Executive Support and Projects Officer, Australian Manufacturing Workers' Union, 23 February 2021, p 34.

next 12 months is change management. It identified a need for firms to execute a plan specific to the organisation's context and build a comprehensive change management plan to support automation.<sup>166</sup>

- 3.36** The Australian Manufacturing Workers' Union pointed to the benefits to both employees and employers of a planned approach:

With proper planning and consultation, we can ensure that innovation and automation delivers for workers, not just capital, and build the future economy that we want in NSW.<sup>167</sup>

- 3.37** It was critical of industry's current approach to planning outlining that workers have generally not been consulted, the education system is inadequate and that the focus to date has been on high bonuses for executives and profits as opposed to a focus on jobs for the future.<sup>168</sup>

### **Consultation and engagement with employees**

- 3.38** There was broad consensus that consultation with employees is paramount for planning and managing technological advancements in the workplace. Many stakeholders consider that genuine consultation with workers will lead to better outcomes for both employers and employees.<sup>169</sup>

- 3.39** The Centre for Future Work expressed that change is more 'feasible and successful' when all parties have 'a genuine say in how it is implemented and managed'. It summarised that effective consultation should involve structured processes, early notification and input, discussions about the timing, scope and effects, and that it is included in enterprise bargaining processes:

It is important for there to be a structured process of information sharing, consultation, and negotiation over the process of technological change. Workers and their unions should be notified of company plans for new technologies, even at the conceptual stage of planning. Discussions should occur within workplaces regarding the timing, scope, and effects of new investments in technology. Opportunities should be provided for early input from workers regarding how that change will be managed; often innovation programs will be all the stronger thanks to the ideas and concerns expressed by workers. Enterprise bargaining should include the terms of technology and its application, providing an opportunity for employers and unions to dialogue and come to agreement over the main features of technological change.<sup>170</sup>

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<sup>166</sup> Submission 44, Forrester Research Inc, pp 19-20.

<sup>167</sup> Submission 12, Australian Manufacturing Workers' Union, p 4.

<sup>168</sup> Submission 12, Australian Manufacturing Workers' Union, p 5.

<sup>169</sup> See for example Submission 5, Centre for Future Work, p 19; Submission 37, The McKell Institute, attachment 1, p 11; Submission 3, Centre for Responsible Technology, p 12; Evidence, Mr Alistair Sage, Senior Legal Officer, Australian Workers' Union, 30 March 2021, p 45. Evidence, Mr Smith, 29 June 2022, p 22; Evidence, Ms Jamila Gherjestani, National WHS Director, Australian Workers' Union, 30 March 2021, p 46.

<sup>170</sup> Submission 5, Centre for Future Work, p 19.

**3.40** The McKell Institute and Australian Manufacturing Workers' Union identified Germany as providing a good example of positive engagement and widespread consultation with workers. The Australian Manufacturing Workers' Union explained:

Germany has had one of the best responses to Industry 4.0 of any advanced economy so far. Unlike in Australia, active consultation and engagement between unions, employers, educational institutions, and government has been undertaken, to consider the future skills, training, and employment needs of an automated manufacturing sector.<sup>171</sup>

**3.41** The union said that a good first step would be to formally establish forums for government, employers and unions to enable ongoing consultation including to consider the impacts new technologies on the workplace.<sup>172</sup>

**3.42** A number of stakeholders called for a requirement for employers to genuinely negotiate with their workers rather than unilaterally imposing top-down change with the shortest possible consultation period.<sup>173</sup>

**3.43** In respect of progress by other countries to engage workers in respect of workplace automation and surveillance, the committee noted the developments in California, specifically that it has established laws relating to quotas in warehouse distribution centres. Under these laws, certain employers must provide employees with a written description of the quotas they are expected to meet.<sup>174</sup>

### **Benefits to employees**

**3.44** A number of stakeholders raised concerns about the data that automation and technological advancement in the workplace is developed upon, noting that it is data that is generated by workers. These inquiry participants consider that employee generated data ought to be used for the mutual benefit of both employers and employees on the basis that where such data is being used to create efficiencies and automation within workplaces, workers, as the generators of that data, deserve to benefit from its use.<sup>175</sup>

**3.45** In this vein, Mr Bernie Smith, Branch Secretary of the Shop, Distributive, Allied Workers' Association, argued that workplace laws need to allow for the sharing of productivity gains:

We should be structuring our workplace laws to ensure that productivity gains are shared between profits for companies, higher wages for higher skilled workers but also supporting the workers who are displaced.<sup>176</sup>

<sup>171</sup> Submission 12, Australian Manufacturing Workers' Union, p 4.

<sup>172</sup> Submission 12, Australian Manufacturing Workers' Union, p 5.

<sup>173</sup> See for example Submission 23, The Australian Workers' Union, p 5; Submission 5, Centre for Future Work, p 21; Submission 6, United Workers' Union, p 8.

<sup>174</sup> CDF Labor Law; *California Labor Commissioner Gives Insight into 2022's Warehouse Distribution Quota Law*, 7 January 2022, California Labor & Employment Law Blog, callaborlaw.com.

<sup>175</sup> See for example Evidence, Mr Lewis, 29 June 2022, p 7; Evidence, Mr Costa, 9 November 2020, p 16; Evidence, Mr Smith, 29 June 2022, p 25.

<sup>176</sup> Evidence, Mr Bernie Smith, Branch Secretary, Shop, Distributive and Allied Employees' Association, 19 April 2021, p 16.

**3.46** The Centre for Responsible Technology identified how technology progress can have broader benefits:

The ongoing process of technological and economic development presents society with key options and choices regarding how the benefits of technology should be realised. Technological progress ... can support a higher material standard of living, reflected in higher incomes and higher rates of consumption...<sup>177</sup>

**3.47** Some stakeholders also argued that workers should have more agency over the information they generate, including being involved in discussions about its use. Mr Smith from the Shop, Distributive and Allied Workers Association reasoned if every movement of workers has been tracked to enable automation to occur, then the intellectual property ought to be owned by the worker and there is greater imperative that workers benefit from the data they have created.<sup>178</sup> The Centre for Responsible Technology expressed that not only should the information be owned by workers but that employers should have to negotiate their use of it.<sup>179</sup>

**3.48** Ms Lauren Kelly from the United Workers' Union expressed that for many decades, productivity gains have been 'completely decoupled from wages growth', advocating for 'some kind of new redistributive method that is innovative that can seek to return some of those profits back to labour'.<sup>180</sup>

**3.49** Participants provided ideas about ways in which employees could share in the benefits from the data they generate. These included compensation, reduced work hours and increased wages:

- Mr Thomas Costa from Unions NSW proposed that 'where workers' data leads to productivity increase, that should be re-invested into the employee through some form of compensation'.<sup>181</sup>
- His organization also submitted that 'a significant portion of Australians would prefer to be working less hours which could be a mutual benefit from increased productivity as automation progresses'.<sup>182</sup>
- The Centre for Responsible Technology outlined that 'since each hour of labour can now produce more output, new technology can also facilitate ongoing reductions in working time'.<sup>183</sup>
- It also proposed that 'if it is possible to calculate the financial benefit to employers (and it is) in terms of productivity, streamlined functions and increased work intensity, then this could be subject to industrial negotiations and recognition during wage negotiations'.<sup>184</sup>

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<sup>177</sup> Submission 5, Centre for Future Work, p 5.

<sup>178</sup> Evidence, Mr Smith, 29 June 2022, p 25.

<sup>179</sup> Submission 3, Centre for Responsible Technology, p 12.

<sup>180</sup> Evidence, Ms Lauren Kelly, Media and Research, Office of the National Secretary, United Workers Union, 17 May 2021, p 32.

<sup>181</sup> Evidence, Mr Costa, 9 November 2020, p 16;

<sup>182</sup> Submission 28, Unions NSW, p 38.

<sup>183</sup> Submission 5, Centre for Responsible Technology, p 5.

<sup>184</sup> Submission 3, Centre for Responsible Technology, p 11.

## Training and skills development

**3.50** The committee heard that investment in education and training plays a critical role in improving productivity, job creation, and adapting to the impacts of new technologies on the workplace.<sup>185</sup> Stakeholders also outlined that the changing nature of work and skill requirements are occurring at all levels of the workforce. The Australian Industry Group explained these shifting demands:

The workforce needs to be able to operate with emerging new technologies and systems and engage in more complex work and relationships in environments that are constantly changing. Labour demand is shifting towards higher level and more cognitive skills for which many workers are not adequately trained, and it is contributing to the hollowing out of middle level skill jobs.<sup>186</sup>

**3.51** When discussing impacts of automation in the workplace, it was common for stakeholders to express that technological advancements should be accompanied by an increased commitment to improved education systems, worker training and skill development.<sup>187</sup> Mr Damien Scheidel from ALDI recognised this issue, stating:

...we see the increasing intensity of technology and data-driven operations across the economy requiring a higher level of training in, and availability of, pathways to transition workers into higher skilled roles.<sup>188</sup>

**3.52** Inquiry participants outlined the following areas in respect of training and skill development that require attention in order to better manage workplace automation into the future:

- greater investment and management of the vocational education and training sector<sup>189</sup>
- skills audit to identify jobs of the future<sup>190</sup>
- an obligation on employers to offer retraining for workers displaced by automation<sup>191</sup>
- training funds that provide access to career long training opportunities, with employers making contributions<sup>192</sup>

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<sup>185</sup> Submission 12, Australian Manufacturing Workers' Union, p 8.

<sup>186</sup> Tabled document, Australian Industry Group, Submission, 27 June 2022, p 9.

<sup>187</sup> See for example Answers to questions on notice, Dr Healy, 29 June 2022, p 4; Evidence, Mr Smith, 29 June 2022, p 22.

<sup>188</sup> Evidence, Mr Damien Scheidel, Managing Director, National Supply Chain, ALDI Australia, 30 March 2021, p 30.

<sup>189</sup> See for example Submission 12, Australian Manufacturing Workers' Union, pp 2 & 7; Evidence, Mr Smith, 29 June 2022, p 22; Submission 18, Public Service Association of New South Wales, p 14; Submission 28, Unions NSW, p 6; Submission 30, Transport Workers' Union, p 69; Evidence, Mr Peter Achterstraat, NSW Productivity Commissioner, 30 March 2021, p 56.

<sup>190</sup> See for example Evidence, Mr Smith, 29 June 2022, p 22; Submission 12, Australian Manufacturing Workers' Union, p 8; Evidence, Ms Abha Devasia, National Research Coordinator, Australian Manufacturing Workers' Union, 23 February 2021, p 35.

<sup>191</sup> See for example Evidence, Mr Smith, 29 June 2022, p 22; Submission 12, Australian Manufacturing Workers' Union, p 8.

<sup>192</sup> See for example Submission 37, The McKell Institute, attachment 1, p 69; Submission 6, United Workers' Union, p 12; Submission 19, Shop, Distributive and Allied Employee's Association, p 4; Submission 28, Unions NSW, p 6; Submission 12, Australian Manufacturing Workers' Union, p 8.

- upskilling and training for staff to manage technological advancements in their workplaces.<sup>193</sup>

**3.53** The Shop, Distributive and Allied Workers' Association also identified a need for government, industry and unions to work together to reskill workers with ongoing employment being a priority.<sup>194</sup>

### **Redeployment, redundancy and compensation**

**3.54** The committee heard that automation can lead to significant job destruction and for workers that are not easily able to move into other industries, this can cause them hardship and distress.<sup>195</sup> A number of stakeholders expressed concern that employment laws do not adequately deal with the impacts of automation, particularly for displaced workers.<sup>196</sup>

**3.55** Strong workplace protections and job security were identified as important aspect in managing workplace technological advancements.<sup>197</sup> Dr Eugene Schofield-Georgeson submitted that 'stronger employment protection legislation contributes to less turnover and job reallocation, thereby enhancing job security'.<sup>198</sup>

**3.56** Mr Bernie Smith argued for updated industrial relation laws to ensure that workers who are displaced have an opportunity to find productive and secure work. He said there should be a focus on training and upskilling with redundancy as a last resort.<sup>199</sup>

**3.57** Stakeholders provided the following ideas for improved protections to workers:

- identifying ways to transition workers displaced by automation to new occupations<sup>200</sup>
- establishing an independent tribunal to hear worker disputes regarding use of technology including oversight of algorithmic and automated decision making in the workplace<sup>201</sup>
- the need to work with the Commonwealth to ensure that employment laws require corporate accountability in relation to the introduction of workplace automation where it leads to job displacement<sup>202</sup>

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<sup>193</sup> See for example Evidence, Mr Smith, 29 June 2022, p 22; Submission 12; Submission 5, Centre for Future Work, p 18; Submission 12, Australian Manufacturing Workers' Union, p 8; Evidence, Mr Buckland, 17 May 2021, p 39; Evidence, Mr Morey, 9 November 2020, p 17.

<sup>194</sup> Submission 19, Shop, Distributive and Allied Employee's Association, p 13.

<sup>195</sup> Submission 6, United Workers' Union, p 44.

<sup>196</sup> See for example Evidence, Mr Smith, 29 June 2022, p 16; Submission 9, Dr Eugene Schofield-Georgeson, p 2;

<sup>197</sup> See for example Submission 6, United Workers' Union, p 44 and Submission 12, Australian Manufacturing Workers' Union, p 4.

<sup>198</sup> Submission 9, Dr Eugene Schofield-Georgeson, p 16.

<sup>199</sup> Evidence, Mr Smith, 29 June 2022, p 16.

<sup>200</sup> Submission 37, The McKell Institute, attachment 1, p 56.

<sup>201</sup> Submission 6, United Workers' Union, p 9.

<sup>202</sup> Submission 19, Shop, Distributive and Allied Employee's Association, p 3.



- providing a benefit to workers during the transition period<sup>203</sup>
- facilitating mobility in the workplace to assist displaced workers to fill new positions that arise<sup>204</sup>
- facilitating decent retirement including bridging benefits and early retirement incentives.<sup>205</sup>

**3.58** The Australian Workers' Union identified that Australia lags behind many other OECD countries in its employment protections for workers impacted by automation. It said that New South Wales legislation previously provided for employers to assist employees, including via retraining, re-employment and compensation, and suggested that this be re-introduced.<sup>206</sup>

**3.59** While many agreed that reskilling and redeployment should be the priority, Dr Eugene Schofield-Georgeson provided detailed submissions about the need to improve the approach to automation-led redundancies. He argued for these to be treated differently to 'other, less socially harmful forms of unintentional redundancy', and asserted that meeting the challenge of workplace automation begins by improving the law that regulates the replacement of labour by automating technologies. Dr Schofield-Georgeson called for reforms to the concept of 'redundancy', increasing redundancy compensation and extending the coverage of redundancy law.<sup>207</sup>

## Committee comment

**3.60** Automation, while inevitable and in many ways desirable, continues to be an understandable cause of concern for workers across New South Wales. Automation, in some form or another, has impacted on work and workplaces since the industrial revolution, replacing jobs, creating new ones and bringing about a multitude of productivity gains, new industries and employment opportunities.

**3.61** The gains, benefits and efficiencies created by workplace automation are countless and to date have largely been driven by companies' desire to improve bottom lines and increase productivity. Simultaneously, tech companies have seized on these business motivations and are developing new products and systems ready to be snapped up by employers in their quests to achieve productivity gains and cut costs. These two forces have been largely unstoppable in the uptake of automation technologies in workplaces in New South Wales, which appears to have accelerated in recent years, not least with the technology boom and the COVID-19 pandemic.

**3.62** The committee heard that the benefits to workers resulting from workplace automation have not generally been at the centre of such workplace advancements. This is not to say that workers have not enjoyed some benefits from some aspects of workplace automation, but generally this has not been a driving factor. Correspondingly, many workers are concerned about the impact of automation on their future employment and livelihoods.

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<sup>203</sup> Evidence, Mr Buckland, 17 May 2021, p 39.

<sup>204</sup> Submission 5, Centre for Future Work, pp 18-19.

<sup>205</sup> Submission 5, Centre for Future Work, pp 18-19.

<sup>206</sup> Submission 23, Australian Workers' Union, pp 4-5.

<sup>207</sup> Submission 9, Dr Eugene Schofield-Georgeson, pp 7-25.

- 3.63** The committee is of the view that while they have many economic benefits, technological advancements in the workplace, including automation, should not continue to go unchecked and unchallenged. We also consider that this imperative is growing with the ever-increasing power of technology over our working and non-working lives. We understand that navigating this path is not straightforward. There are enormous complexities that arise from having multiple players (industry, workers and unions, tech companies, citizens and government), often with competing interests, all with a stake in the game. However, the committee agrees with the stakeholders who expressed the view that we should not just allow technology to happen to us. Rather we should be more deliberate in shaping what this looks like, how it affects workers and how we will manage technological advancements in our workplaces into the future.
- 3.64** To that end, the committee considers that work health and safety laws should reflect the uptake of automated processes in workplaces, particularly where those technologies are being used to allocate work. We recommend that government consider amending work health and safety laws to regulate the allocation of work via software/platforms/code/algorithms/apps to ensure worker safety, appropriate workloads, compliance with industrial instruments, non-discriminatory practices, and a fair and equitable distribution of work.

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### **Recommendation 8**

That the NSW Government consider amending work health and safety laws to regulate the allocation of work by software/platforms/code/algorithms/apps, expressly providing that the allocation of work:

- must not be unsafe, excessive or create unreasonable workloads
- must comply with requirements of industrial instruments covering the work
- must not use discriminatory attributes in the distribution of work
- must promote a fair and equitable distribution of work, with systems promoting a right to disconnect through a fair rotational allocation of work system, rather than an always on fastest finger approach to work allocation.

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- 3.65** The committee considers that the benefits currently being enjoyed by industry and tech companies can be equally enjoyed by workers – and the negative impacts on them reduced – if planning and consultation is at the heart of such developments, underscored by a genuine commitment to share the benefits of productivity gains with employees.
- 3.66** Similarly, more effort is required to ensure that Technical and Further Education (TAFE) and Vocational Education Training (VET) programs adequately prepare people for the changing nature of work. The committee agrees with those stakeholders that raised concern about the current funding and availability of TAFE and other training to people, particularly those living in regional areas. We consider that a tripartite approach to training and skill development is paramount. Therefore the committee recommends that government looks to increase funding to TAFE and VET and ensure better accessibility for those living in regional New South Wales. We also recommend that the government facilitate a tripartite approach with employers and registered organisations to training and skill development for future jobs.

### **Recommendation 9**

That the NSW Government consider ways to increase funding for Technical and Further Education and Vocational Education and Training programs, including making them accessible and applicable to regional New South Wales.

### **Recommendation 10**

That the NSW Government facilitate a tripartite industry approach, including employers and registered organisations, to training and skills development.

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- 3.67** Actively shaping our responses to technology in the workplace, in our view, requires government leadership. Leadership to bring together key players and plan for the future of jobs in this state. Leadership to identify approaches for workers to re-skill, retrain and re-deploy as well as sharing in the benefits derived from automation led productivity gains. Leadership to identify, educate and prepare for jobs of the future.
- 3.68** Recognising that the NSW Government is the largest employer in the state – and is thus directly responsible for the working conditions of hospitals and the broader public health system, schools, public transport and many other services, the committee considers that the NSW Government should lead the way, providing a best practice approach to managing technological advancement in workplaces across New South Wales.
- 3.69** In our view, the NSW Government is in a prime position to lead by example – to be a model employer – and that by taking leadership in the face of these challenges, the NSW Government can have an impact not just on its own employees, but also on other industries, workplaces, and the broader economy and community. We therefore recommend that the NSW Government develop an ambitious strategy for its diverse workplaces – *Managing technological advancement in NSW public sector agencies* – that addresses the issues canvassed in this report including to:
- specify the overarching goal of government in managing technological advancement within its agencies into the future
  - explicitly consider and plan for the impacts of automation
  - identify skills of the future
  - consider/map education system requirements
  - set key principles or foundations to guide technological advancement (for example productivity gains; shared benefits to employees; improved citizen services)
  - identify legislation and regulation requirements
  - set minimum standards for industry providing services to government agencies
  - set key objectives with regard to: consulting and engaging with workers; protecting workers' rights; sharing benefits with workers; employees' agency over data; re-training, skill development and ongoing education; and entitlements including re-deployment, redundancy and compensation.

- 3.70** In light of the leadership role that we have advocated for government in both our first, and now our second and final reports, the committee also recommends that the NSW Government develop a best practice framework to guide technological advancement including automation in other workplaces in New South Wales. This should include consideration of funding by employers and government to support the training of employees in industries facing job displacement from automation, along with modern termination, change and redundancy laws that focus on re-skilling and re-deployment, with redundancy as a last resort.
- 3.71** The NSW Government should require adherence to this best practice guide as a term in any contract it enters into with private sector businesses.
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**Recommendation 11**

That the NSW Government develop a strategy for *Managing technological advancement in NSW public sector agencies* that addresses the issues canvassed in this report.

**Recommendation 12**

That NSW Government develop a best practice framework to guide the implementation of automation in other workplaces in New South Wales including by considering:

- funding by employers and government to support the training of employees in industries facing job displacement from automation
  - modern termination, change and redundancy laws that focus on re-skilling and re-deployment, with redundancy as a last resort.
- 

- 3.72** In addition, for the reasons outlined in the earlier section of this report on workplace surveillance, the committee is of the view that the principles underpinning recommendations 1 to 6 should apply also to the introduction of new technologies in the workplace. We recommend that the NSW Government, in consultation with workers, unions, business groups and experts, enhance the regulation of workplace automation activities including to set notification and consultation requirements, to establish dispute resolution processes, and to establish best practice guidance for the adoption of new automation technologies in workplaces.
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**Recommendation 13**

That the NSW Government, in consultation with workers, unions, business groups and experts, enhance the regulation of workplace automation activities, including to:

- provide notification and consultation requirements for employees
- establish dispute resolution processes
- set best practice guidance for the adoption of new automation technologies in workplaces.

Further, that the NSW Government consider amending laws to require external approval prior to an employer undertaking or implementing automation measures, with the same regulatory framework as outlined for workplace surveillance in recommendation 5.

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## Appendix 1 Submissions

No.	Author
1	University of Sydney - Australian Women's Working Futures Research Project
2	Australian Lawyers Alliance
3	The Australia Institute's Centre for Responsible Technology
4	Mr John Moratelli
5	Centre for Future Work
6	United Workers Union
7	Business NSW (formerly NSW Business Chamber)
8	The Law Society of New South Wales
9	Dr Eugene Schofield-Georgeson
10	Deliveroo
11	Dr Tom Barratt, Dr Caleb Goods, Dr Brett Smith and Dr Alex Veen
12	AMWU NSW and ACT Branch
13	Uber
14	QUT Centre for Decent Work and Industry
15	upcover
16	Australian Rail Tram and Bus Industry Union, NSW Branch
17	Professor David Peetz
18	Public Service Association of New South Wales
19	Shop, Distributive and Allied Employee's Association (NSW Branch)
20	Ola Australia Pty Ltd
21	Australian Road Transport Industrial Organisation NSW Branch
22	Restaurant & Catering Industry Association
23	The Australian Workers' Union
23a	The Australian Workers' Union
24	New South Wales Society of Labor Lawyers
25	State Insurance Regulatory Authority (SIRA)
26	Department of Premier and Cabinet Employee Relations
27	SafeWork NSW
28	Unions NSW
29	International Transport Workers' Federation (ITF)
30	Transport Workers' Union (TWU)
31	Rideshare Drivers Association of Australia

<b>No.</b>	<b>Author</b>
32	Motorcycle Council of New South Wales Incorporated
33	Direct Selling Australia
34	Revenue NSW
35	Mr Philip Sacks
36	Australian Industry Group (Ai Group)
37	The McKell Institute
38	Confidential
39	NSW Innovation and Productivity Council and NSW Productivity Commission
40	Australian Institute of Employment Rights
41	Pedestrian Council of Australia Limited
42	Transport for NSW
43	Transport Education, Audit and Compliance Health Organisation Limited (TEACHO) Limited
44	Forrester Research Inc
45	NSW Farmers' Association
46	Woolworths Group Limited
47	Airtasker
48	ALDI
49	NSW Nurses and Midwives' Association
50	Mable
51	Confidential
52	Doordash
53	Hireup

## Appendix 2 Witnesses at hearings

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
<b>Monday 9 November 2020 Macquarie Room Parliament House, Sydney</b>	Mr Malcolm Mackenzie	Rideshare Driver
	Mr Diego Franco	Food Delivery Worker
	Mr Esteban Salazar	Food Delivery Worker
	Mr Steve Khouw	Food Delivery Worker
	Mr Mark Morey	Secretary, Unions NSW
	Mr Thomas Costa	Assistant Secretary, Unions NSW
	Ms El Leverington	Legal/Industrial Officer, Unions NSW
	Mr Simon Smith	Managing Director, Ola Australia and New Zealand
	Ms Ann Tan	Head of Business Excellence and Legal, Ola Australia and New Zealand
	Ms Lihong Wei	Widow of Mr Xiaojun Chen, Food Delivery Worker
	Ms Tong Chen	Interpreter
	Ms Kate Foy	Deputy Secretary, Community Engagement, Department of Premier and Cabinet
	Mr Charlie Heuston	Acting Executive Director – Employee Relations, Community Engagement, Department of Premier and Cabinet
Mr Mark Frost	Chief Economist, Business NSW	
Mr Luis Izzo	Representative, Australian Business Industrial	

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
<b>Monday 16 November 2020 Macquarie Room Parliament House, Sydney</b>	Mr Hugh McMaster	Secretary and Treasurer, Australian Road Transport Industrial Organisation NSW Branch
	Mr Michael Kaine	National Secretary, Transport Workers' Union
	Mr Richard Olsen	Secretary, NSW Branch of Transport Workers' Union
	Mr Jack Boutros	Strategic Campaigner, Transport Workers' Union
	Mr Mark Goodsell	Head, NSW Australian Industry Group
	Mr Stephen Smith	Head, National Workplace Relations Policy, Australian Industry Group
	Mr Peter Dunphy	Executive Director, Compliance and Dispute Resolution, SafeWork NSW
	Ms Skye Buatava	Director, Research and Evaluation, SafeWork NSW
	Ms Carmel Donnelly	Chief Executive, State Insurance Regulatory Authority (SIRA)
	Mr Darren Parker	Executive Director, Workers and Home Building Compensation Regulation, SIRA
	Dr Petrina Casey	Director, Health Policy, Prevention and Supervision, SIRA
	Mr Rob Craig	Interim Group Executive, Personal Injury, icare
Dr Chris Colquhoun	Chief Medical Officer, icare	



<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
<b>Tuesday 23 February 2021 Jubilee Room Parliament House, Sydney</b>	Mr Jun Yang	Hungry Panda delivery driver
	Mr Fang Sun	Hungry Panda delivery driver
	Ms Helen Yang	Interpreter
	Mr Wes Lambert	Chief Executive Officer, Restaurant and Catering Industry Association
	Mr Thomas Green	Head of Policy, Government and Public Affairs, Restaurant and Catering Industry Association
	Ms Tina Sun	Human Resources Manager, Hungry Panda
	Ms Chloe Smith	Executive Support and Projects Officer, Australian Manufacturing Workers' Union
	Ms Abha Devasia	National Research Coordinator, Australian Manufacturing Workers' Union
	Ms Claire Pullen	Project Officer, Public Service Association of New South Wales
	Mr Shay Deguara	Manager of Industrial Support, Public Service Association of New South Wales
	Mr Scott Johnston	Deputy Secretary, Chief Commissioner of State Revenue, Revenue NSW
	Mr Cullen Smythe	Commissioner of State Revenue, Revenue NSW
<b>Tuesday 30 March 2021 Jubilee Room Parliament House, Sydney</b>	Mr Ed McManus	Chief Executive Officer, Deliveroo
	Ms Julia Duck	Head of Operations, Strategy and Performance, Deliveroo
	Mr Tim Fung	Co-Founder and Chief Executive Officer, Airtasker
	Mr Damien Scheidel	Managing Director, National Supply Chain, ALDI Australia

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
	Ms Jamila Gherjestani	National WHS Director, Australian Workers' Union
	Mr Alistair Sage	Senior Legal Officer, Australian Workers' Union
	Mr Toby Warnes	Director of Organising, Australian Rail Train and Bus Industry Union, NSW Branch
	Mr Alex Claassens	Branch Secretary, Australian Rail Train and Bus Industry Union, NSW Branch
	Mr Peter Achterstraat	NSW Productivity Commissioner
	Mr Neville Stevens	Chair, NSW Innovation and Productivity Council
	Professor David Peetz <i>(via videoconference)</i>	Emeritus Professor, Department of Employment Relations and Human Resources, Griffith Business School, Griffith University
	Dr Alex Veen	Lecturer (Academic Fellow), University of Sydney Business School
	Dr Tom Barratt <i>(via videoconference)</i>	Lecturer, Centre for Work + Wellbeing, Edith Cowan University
	Professor Daryll Hull	Executive Chair, Transport Education Audit Compliance Health Organisation (TEACHO)
<b>Monday 19 April 2021 Macquarie Room, Parliament House, Sydney</b>	Ms Carmel Pelunsky	Director, Talent and Future of Work, Woolworths Group
	Ms Jessica Digby	Workplace Relations Partner, Woolworths Group
	Ms Rachel Elliott	Head of Government Relations – Retail, Woolworths Group
	Mr Tom Windeyer	General Manager, Last Mile, WooliesX

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
	Mr Craig Adams	General Manager, National Operations, Woolworths Group
	Mr Bernie Smith	Branch Secretary, Shop, Distributive and Allied Employees' Association, NSW Branch
	Mr Mitchell Worsley	Industrial Officer, Shop, Distributive and Allied Employees' Association, NSW Branch
	Mr Peter Arkle	Chief Executive Officer, NSW Farmers
	Ms Kathy Rankin	Policy Director – Rural Affairs and Business, Economics and Trade, NSW Farmers
	Ms Gracia Kusuma	Director Workplace Relations, NSW Farmers
	Mr Matthew Denman	General Manager, Uber Eats
	Ms Amanda Gilmore	Head of Driver Operations, Uber
	Professor Rae Cooper	Professor of Gender, Work and Employment Relations, University of Sydney – Australian Women's Working Futures
	Professor Robyn Mayes <i>(via videoconference)</i>	Director, Centre for Decent Work & Industry, Queensland University of Technology
	Dr Penelope Williams <i>(via videoconference)</i>	Senior Lecturer, School of Management, Queensland University of Technology
<b>Monday 17 May 2021 Macquarie Room, Parliament House, Sydney</b>	Mr Morten Belling	Managing Director, Menulog
	Mr Steven Teoh	Director of Delivery, Menulog
	Ms Vittoria Bon <i>(via videoconference)</i>	Government and Industry Relations Manager, Corporate Affairs, Coles
	Ms Mel Gatfield	Director of New Organising, NSW Secretary, United Workers Union

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
	Ms Lauren Kelly <i>(via videoconference)</i>	Media and Research, Office of the National Secretary, United Workers Union
	Mr Michael Buckland	Chief Executive Officer, McKell Institute
<b>Friday 10 September 2021 Videoconference</b>	Ms Rebecca Burrows	General Manager, Doordash
	Mr Puji Fernando	Senior Manager, Strategy and Operations, Doordash
	Mr Young Hou	Driver Operations Manager, EASI
	Mr Will Wang	Legal Manager, EASI
	Ms Kitty Lu	Compliance and Public Relations Manager, EASI
	Mr Peter Scutt	Co-Founder and Chief Executive Officer, Mable
	Ms Natalie Lang	Branch Secretary, Australian Services Union (NSW & ACT Branch)
	Mr Angus McFarland	Assistant Secretary, Australian Services Union (NSW & ACT Branch)
	Mr Gerard Hayes	Secretary, Health Services Union (NSW, ACT & QLD)
	Ms Lauren Hutchins	Division Secretary, Aged Care and Disabilities, Health Services Union (NSW, ACT & QLD)
<b>Monday 18 October 2021 Videoconference</b>	Mr Anthony Wing	Point to Point Transport Commissioner
	Mr Scott Johnston	Deputy Secretary and Chief Commissioner of State Revenue, Revenue NSW
	Mr Cullen Smythe	Commissioner of State Revenue, Revenue NSW

Date	Name	Position and Organisation
<b>Friday 29 June 2022</b> <b>Room 814-815</b> <b>Parliament House</b>	Mr Peter Lewis <i>(via videoconference)</i>	Director, Centre for Responsible Technology, Australia Institute
	Professor Mark Andrejevic <i>(via videoconference)</i>	Professor, Communication & Media Studies, Monash Data Futures Institute
	Professor Toby Walsh <i>(via videoconference)</i>	Laureate Fellow and Scientia Professor of Artificial Intelligence, University of New South Wales
	Professor Ariadne Vromen <i>(via videoconference)</i>	Professor of Public Administration, Crawford School of Public Policy, Australian National University
	Dr Josh Healy <i>(via videoconference)</i>	Senior Lecturer in Employment Relations, The University of Newcastle
	Professor Leah Ruppner <i>(via videoconference)</i>	Sociology and Founding Director of The Future of Work Lab at the University of Melbourne
	Dr Brendan Churchill <i>(via videoconference)</i>	Australian Research Council Research Fellow and Lecturer in Sociology, School of Social and Political Sciences, Faculty of Arts, University of Melbourne
	Mr Bernie Smith	Branch Secretary, Shop, Distributive and Allied Employees' Association (NSW Branch)
	Ms Nicola Street <i>(via videoconference)</i>	National Manager – Workplace Relations Policy, Australian Industry Group
	Mr Brent Ferguson <i>(via videoconference)</i>	Director – Major Cases, Workplace Relations Advocacy & Policy, Australian Industry Group
Mr Sam Moreton	General Manager, Policy & Analysis, Business NSW	
Mr Luis Izzo	Managing Director – Sydney Workplace, Australian Business Lawyers & Advisors	



## Appendix 3 Legal advice on the power to summon witnesses outside the state of New South Wales

### Memorandum for the Office of the Clerk, Legislative Council of New South Wales Power of committees to summons witnesses outside of the State of New South Wales

On Friday 2 April 2021, I was instructed by the Clerk of the Legislative Council of New South Wales to examine four questions that relate to the powers of the Council's committees to summon witnesses outside of the State of New South Wales.

I set these questions out, together with my short answers to them, below. The reasoning that sits behind these answers is expounded in the remainder of the memorandum.

- 1. Does a parliamentary committee of the Legislative Council have the power under s 4 of the *Parliamentary Evidence Act 1901*(NSW) to issue a summons to a witness currently residing outside of New South Wales?**

*While there is some ambiguity, the better view is no. Although the New South Wales Parliament has constitutional power to legislate extra-territorially, the better interpretation of s 4 of the *Parliamentary Evidence Act* is that it does not currently extend to authorise the issue of a summons to a witness residing outside of the State. It is my recommendation that the New South Wales Parliament consider amending the provision.*

- 2. If the answer to (1) is yes, how would this power be enforced in the event that a witness did not attend?**

*Not strictly necessary to answer. However, this is considered in the context of answering (1). As there is no mechanism for service of a summons outside of the State, this supports the absence of the power to compel witnesses to attend.*

- 3. If the answer to (1) is no, is there an inherent power of a committee of the Legislative Council to issue a summons requiring the attendance of a witness currently residing outside of New South Wales (either as articulated in Standing Order 208 or otherwise sourced in the common law)?**

*No.*

- 4. If the answer to (1) or (3) is yes, would a witness appearing from outside of the jurisdiction via electronic means have the benefit of, and to what extent, parliamentary privilege that attaches to a witness appearing in the jurisdiction?**

*While not strictly necessary to answer, this question is considered more broadly, where a witness residing outside of the jurisdiction might appear voluntarily before a parliamentary committee of the Legislative Council. There is a strong argument that there is a presumption of statutory interpretation that the legislation of one State does not intend to amend or abrogate the parliamentary privileges of another State unless it does so expressly or by necessary intendment. Further, there is an argument that there exists inter-state immunity that would protect proceedings in the parliament in one State of the Australian federation from liability in another State.*

### **Background context**

The request arose in the context of the inquiry of the Legislative Council's Select Committee on the impact of technological and other changes on the future of work and workers in New South Wales. The Committee, established on 24 March 2021, has invited the attendance of a number of witnesses, including those residing and working permanently interstate in Melbourne. To date, those witnesses currently residing and working interstate have not accepted the invitation to attend and give evidence voluntarily. The Committee has therefore sought the advice of the Clerk's Office as to whether they have the power to issue a summons to those interstate witnesses and compel their attendance before the Committee. Given this factual context, this advice is addressed to the question of whether the Legislative Council's committees have the power to summons and compel the attendance of inter-State witnesses. While much of the discussion is also relevant to the question of whether those committees have the power to summons and compel the attendance of in foreign jurisdictions outside of Australia, there are some important differences in constitutional principle.

### **Possible source of powers of the New South Wales Legislative Council Committees to call witnesses**

The powers of Committees of the Legislative Council are set out in Standing Order 208:<sup>1</sup>

A committee has power:

- (a) to adjourn from time to time,
- (b) to adjourn from place to place,
- (c) to send for and examine persons, papers, records and things,
- (d) to make visits of inspection within New South Wales and, if authorised by the House, with the approval of the President, elsewhere in Australia and outside Australia, and
- (e) to request the attendance of and examine members of the House.

While (d) makes reference to the possibility of visits elsewhere in Australia, or even outside of Australia, there is no indication in (c) as to whether it has the power to send for and examine persons outside of the State. In any event, these Standing Orders do not provide a *source* of power for Committees, rather they codify the position that exists either under the common law or statute.

The New South Wales Parliament's powers and privileges are not traced back to those inherent in the House of Commons as at a particular date.<sup>2</sup> Rather, the jurisdiction's privileges are a complex amalgam of common law based 'necessity powers', statute, and Article 9 of the *Bill of Rights 1689*. I will therefore turn to consider the position of the New South Wales Parliament by reference first to statute, before turning to any residual common law powers relevant to the power to compel witnesses. I will conclude by considering the

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<sup>1</sup> Made pursuant to *Constitution Act 1902* (NSW) s 15.

<sup>2</sup> Unlike most other colonies, it did not receive this grant in its *Constitution Act 1855* (UK).



extension of parliamentary privileges and immunities to witnesses that might attend from out of the State.

## Questions 1 & 2: Statutory powers to compel interstate witnesses

### (a) *The Parliamentary Evidence Act 1901* (NSW)

Following uncertainty in the second half of the 19<sup>th</sup> century over the powers of the Legislative Assembly and its Committee of Supply to compel witnesses after the Privy Council's decision in *Fenton v Hampton*,<sup>3</sup> provisions were enacted that explicitly conferred this power on the Houses and the Committees. Re-enacted after Federation in largely the same form, s 4 of the *Parliamentary Evidence Act 1901* states:

#### 4 Witnesses how summoned

- (1) Any person not being a Member of the Council or Assembly may be summoned to attend and give evidence before the Council or Assembly by notice of the order of the Council or Assembly signed by the Clerk of the Parliaments or Clerk of the Assembly, as the case may be, and personally served upon such person.
- (2) Any such person may be summoned to attend and give evidence before a committee by an order of such committee signed by the Chair thereof and served as aforesaid.

The statutory power to summons witnesses in s 4 is backed up by a number of enforcement provisions. Sections 7, 8 and 9 combine to provide a process whereby non-attendance of a person summoned under s 4 is certified by the President to a Judge of the Supreme Court,<sup>4</sup> who shall issue a warrant for the apprehension of the person,<sup>5</sup> which provides authority for their apprehension and retention in custody.<sup>6</sup> The *Parliamentary Evidence Act* also clearly establishes that refusal to answer questions may result in the witness being held in contempt, and may be jailed for a term not exceeding one month by the order of the House.<sup>7</sup> Providing false evidence is an offence punishable (this time by the Court) by a term of imprisonment not exceeding five years.<sup>8</sup>

The provisions of the *Parliamentary Evidence Act* have some, albeit limited, intersection with the *Service and Execution of Process Act 1992* (Cth). This provides for the execution of warrants issued by courts interstate in Part 5.<sup>9</sup> This would extend, for instance, to the execution of a warrant issued under s 8 of the *Parliamentary Evidence Act*. It does not,

<sup>3</sup> (1858) 14 ER 727, relating to the legislature of Van Diemen's Land.

<sup>4</sup> Section 7.

<sup>5</sup> Section 8.

<sup>6</sup> Section 9.

<sup>7</sup> Section 11.

<sup>8</sup> Section 13.

<sup>9</sup> See also *Ex parte Iskra* (1962) 63 SR (NSW) 538 as to the operation of an earlier version of the *Service and Execution of Process Act*, and its intersection with the State's extra-territorial limits on legislative power.

however, extend to the issue of processes that require the attendance of witnesses by authorities that are not judicial,<sup>10</sup> as is contemplated by the issue of summonses to witnesses to appear under s 4 of the *Parliamentary Evidence Act*. The interaction of these two pieces of legislation would allow for the inter-state execution of a warrant issued under s 11 where a person had been served with a summons under s 4 of the *Parliamentary Evidence Act*, and failed to attend. The question remains, therefore, as to whether a summons under s 4 of the Act can be served inter-state.

The question then is whether the power to issue a summons in s 4 extends to witnesses residing outside of the State.

### ***(b) Constitutional principles of extra-territoriality***

It is now well established and confirmed through legislative enactment and by High Court authority that the Parliament of New South Wales has the constitutional power to legislate extra-territorially, that is, to enact laws that ‘attach[] legal consequences within the State’s boundaries to acts, circumstances or events which occur beyond those boundaries.’<sup>11</sup>

This power was confirmed by s 2(1) of the *Australia Acts 1986* (Cth and UK), which states:

#### **2 Legislative powers of Parliaments of States**

- (1) It is hereby declared and enacted that the legislative powers of the Parliament of each State include full power to make laws for the peace, order and good government of that State that have extra-territorial operation.

This confirmed the shift in the constitutional position from colonial times, where New South Wales was reliant on the UK to conduct its foreign relations, and had a concomitant restriction on its power to legislate extra-territorially. Section 2(1) of the *Australia Acts* confirmed that this absolute prohibition no longer had relevance in the colony. The High Court had already indicated back in the 1976 case of *Pearce v Florenca* that the States already had power to legislate extra-territorially, at least on matters that ‘touch and concern the peace, order and good government of [the State]’,<sup>12</sup> that have ‘a close connexion with the State and can truly be described as a law for the peace, order and good government of the State’,<sup>13</sup> or ‘nexus’ to the State.<sup>14</sup>

Following the passage of the *Australia Acts*, the High Court has again confirmed this position in the 1988 decision of *Union Steamship Co of Australia Pty Ltd v King* (*‘Union*

<sup>10</sup> Part 3 of the Act applies to such processes, but they are limited to those issued by a Court or ‘authority, defined to mean a ‘judge, magistrate, coroner or officer of a court appointed or holding office under a law of a State’.

<sup>11</sup> Christopher D Gilbert, ‘Extraterritorial State Laws and the Australia Acts’ (1987) 17 *Federal Law Review* 25, 26; referring to FA Trindade, ‘The Australian States and the Doctrine of Extra-territorial Legislative Incompetence’ (1971) 45 *Australia Law Journal* 233.

<sup>12</sup> *Pearce v Florenca* (1976) 135 CLR 507, 512 (Barwick CJ).

<sup>13</sup> Ibid 520 (Gibbs J), referring to the older decision of *Croft v Dumphy* [1933] AC 156.

<sup>14</sup> Ibid 524 (Mason J), although note his Honour did not express a view as to whether this requirement was a constitutional one, as he did not have to in the context of the challenged fisheries legislation. See also 526 (Jacobs J).

*Steamship*)<sup>15</sup> In that case, the High Court said in a unanimous judgment, following the position in *Pearce v Florenca* and other earlier decisions, that ‘It is now accepted beyond any question that colonial legislatures had power to make laws which operate extra-territorially...’<sup>16</sup> This comment, they explained, now applies to the Parliaments of the Australian States.

There does, however, remain a limitation on the extent of this power, notwithstanding the seemingly unconfined nature of the grant of the power in s 2(1), as the *Australia Acts* are explicitly subject to any pre-existing constitutional limitations.<sup>17</sup> The High Court in *Union Steamship* explained that the source of this restriction is the requirements in the State Constitutions (s 5 of the *Constitution Act 1902* (NSW)), that the lawmaking power is for the ‘peace, order and good government’ or ‘peace, welfare and good government’ of the State. This requires a connection, or a relationship, to the State. As Dixon J explained in *Broken Hill South Ltd v Commissioner of Taxation*, a State could make ‘any fact, circumstance, occurrence of thing in or connected with the territory the occasion of the imposition ... of a liability to taxation or any other liability.’<sup>18</sup> This could ‘consist in presence within the territory, residence, domicile, carrying on business there, or even remoter connections.’<sup>19</sup> Once a connection is found to exist, there is no corresponding requirement that there be ‘proportionality’ between the State’s exercise of legislative power and the connection.

The High Court in *Union Steamship* indicated a preference for the language of Gibbs J in *Pearce v Florenca* for the expression of this limitation:

[H]is Honour stated that the requirement for a relevant connexion between the circumstances on which the legislation operates and State should be liberally applied and that even a remote and general connexion between the subject-matter of the legislation and the State will suffice.<sup>20</sup>

Other than this requirement for a nexus, there is no established doctrine that limits the State’s power to enact extra-territorial legislation that would operate in or affect another State of the Commonwealth. In *Mobil Oil Australia Pty Ltd v Victoria*,<sup>21</sup> Gleeson CJ indicated that:

There is nothing either uncommon, or antithetical to the federal structure, about legislation of one State that has legal consequences for persons or conduct in another State or Territory.<sup>22</sup>

However, it might be that there are constitutional limitations at the extremes, where, for instance, one state’s legislation would be incompatible with the continued existence of

<sup>15</sup> (1988) 166 CLR 1, 12 (Mason CJ, Wilson, Brennan, Deane, Dawson, Toohey and Gaudron JJ). And see further confirmation of this precedent in *Port MacDonnell Professional Fishermen’s Association Inc v South Australia* (1989) 168 CLR 340, 372 (The Court); *Mobil Oil Australia Pty Ltd v Victoria* (2002) 211 CLR 1; *APLA Ltd v Legal Services Commissioner (NSW)* (2005) 224 CLR 322.

<sup>16</sup> *Union Steamship* (1988) 166 CLR 1, 12.

<sup>17</sup> *Australia Acts* 1986 s 5(a).

<sup>18</sup> (1937) 56 CLR 337, 375; referred to in *Union Steamship* (1988) 166 CLR 1, 13.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Union Steamship* (1988) 166 CLR 1, 14.

<sup>21</sup> (2002) 211 CLR 1.

<sup>22</sup> *Ibid.* 26.

another State, or the exercise of its constitutional functions.<sup>23</sup> I will return to this possible limitation in my discussion of the amendment or abrogation of privilege by interstate laws, below.

While there therefore remains a requirement for a connection, it is relatively easily satisfied. It would almost certainly be satisfied where New South Wales legislation purports to confer power to summons witnesses from interstate (or even from a jurisdiction outside of Australia) to appear before an inquiry undertaken by a legislative committee in the State. Such a connection is similar to that upheld in *Blue Metal & Gravel (Country) v Bombala Corporation*,<sup>24</sup> where the New South Wales Supreme Court upheld legislation that authorised a local council to conduct operations in Victoria to fulfil its general functions.<sup>25</sup>

***(c) Principles of statutory interpretation: extra-territoriality***

In addition to the constitutional requirement for a connection – albeit remote and general – there is also a presumption of statutory interpretation that, in the absence of clear words or necessary intent, a statute will only apply within the territorial limitations of the jurisdiction.<sup>26</sup> As O'Connor J explained in *Jumbunna*:

In the interpretation of general words in a Statute there is always a presumption that the legislature does not intend to exceed its jurisdiction. Most Statutes, if their general words were to be taken literally in their widest sense, would apply to the whole world, but they are always read as being *prima facie* restricted in their operation within territorial limits.<sup>27</sup>

This presumption originally finds its basis in the comity of nations, that is, the respect of jurisdictions for the sovereignty and laws of other jurisdictions.<sup>28</sup> Leading statutory interpretation commentators D C Pearce and R S Geddes explain that it ‘carries less weight when considering the intended effect of the legislation of one Australian state in its operation in relation to another state’.<sup>29</sup> In the context of the Australian federation, there will be other relevant factors to determining the operation or displacement of the presumption, including the intention of the statute and whether it forms part of a cooperative scheme.<sup>30</sup> If the operation of the presumption would defeat the purpose of the legislation, even if it is not expressly overridden, it can be assumed to have been.<sup>31</sup> In New South Wales, the presumption finds some reference in s 12 of the *Interpretation Act 1987* (NSW), which specifically applies it in relation to officers, offices and statutory bodies; and localities,

<sup>23</sup> See, eg, *ibid* 50 (Kirby J).

<sup>24</sup> (1992) 26 NSWLR 292.

<sup>25</sup> *Ibid* 296, 301.

<sup>26</sup> *Jumbunna Coal Mine NL v Victorian Coal Miners' Association* (1908) 6 CLR 309, 363 (O'Connor J) (*'Jumbunna'*). See also *MacLeod v Attorney-General (NSW)* [1891] AC 455.

<sup>27</sup> *Jumbunna* (1908) 6 CLR 309, 363 (O'Connor J).

<sup>28</sup> *Barcelo v Electrolytic Zinc Co of Australasia Ltd* (1932) 48 CLR 391, 423.

<sup>29</sup> D C Pearce and R S Geddes, *Statutory Interpretation in Australia* (LexisNexis Butterworths, 2011, 7<sup>th</sup> ed) 175.

<sup>30</sup> *Dempster v National Companies and Securities Commission* (1993) 10 ACSR 297, 320 (Malcolm CJ).

<sup>31</sup> *Kumagai Gumi Co Ltd v FCT* (1999) 90 FCR 274, 283.

jurisdiction or other matter or thing. The case law indicates that this is simply a reflection of the common law position.<sup>32</sup>

There is no explicit language in the *Parliamentary Evidence Act* that states that it will apply extra-territorially outside of New South Wales. There is also no provision for machinery for the service of a summons under s 4 on a person not residing in the State of New South Wales.

In relation to judicial proceedings, it has been confirmed that there is no inherent common law power to permit service of a subpoena out of the court's jurisdiction.<sup>33</sup> As explained by Rogers CJ in *Arhill Pty Ltd v General Terminal Company Pty Ltd*, this is based 'essentially in the respect which a State has for the sovereignty of another State. In other words, without the consent of the other State, the sovereign does not seek to exercise its rights and powers, in relation to legal proceedings, within the territory of another.'<sup>34</sup> This position can be changed by legislation. For instance, in relation to judicial proceedings, in addition to the coordinating operation of the *Service and Execution of Process Act 1992* (Cth), referred to above, there is also an explicit power to serve someone outside of the state contained in rule 10.3 of the *Uniform Civil Procedure Rules 2005* as it relates to originating processes in the Supreme Court of New South Wales.

It could be argued that an extra-territorial extension of the operation of s 4 of the *Parliamentary Evidence Act* is required for the legislation to fulfil its objectives of providing the Parliament and its committees with powers of summoning witnesses so that the Parliament can fulfil its legislative and executive oversight functions, particularly against the background of a globalised world and the intersection of local, national and international issues in policy and legislative development.

There is some judicial authority supporting a power to issue a summons extra-territorially without the explicit authorisation that we see in the *Service and Execution of Process Act* and the *Uniform Civil Procedure Act*. In *Re Skase*,<sup>35</sup> Pincus J of the Federal Court of Australia found that the *Bankruptcy Act 1966* intended that a summons could be issued against a person living overseas. The provision relating to summonses did not explicitly apply in this way, and the judge acknowledged difficulties in enforcement. However, there were clear indications in other provisions of the *Bankruptcy Act* that it intended to apply persons residing in Australia or elsewhere. Those provisions would have been frustrated had the power to issue a summons been limited territorially. Pincus J indicated that there was a distinction between issuing a summons and its service, which might require special machinery provisions to enforce.

While not beyond doubt, in the absence of express words such as contained in the *Uniform Civil Procedure Rules*, and any other indication in other provisions of the *Parliamentary Evidence Act* that it intends to apply extraterritorially as was evident in the *Bankruptcy Act*, it seems unlikely that s 4 of the *Parliamentary Evidence Act* would be found to apply extra-territorially. This conclusion is reinforced by the fact that, with the exception of the process

<sup>32</sup> *Morgan v Goodall* (1985) 2 NSWLR 655, 659.

<sup>33</sup> See further *Arhill Pty Ltd v General Terminal Company Pty Ltd* (1990) 23 NSWLR 545, 550 (Rogers CJ Comm Div).

<sup>34</sup> *Ibid.*

<sup>35</sup> (1991) 32 FCR 212.

provided in relation to judicially ordered processes under the *Service and Execution of Process Act 1992* (Cth), there is no procedure for the service of summonses and warrants under s 4 or s 11 of the *Parliamentary Evidence Act*, which are both issued under the authority of the Parliament.

This raises a question, then, as to whether the *Parliamentary Evidence Act* should be amended to extend extra-territorially. As has already been discussed above, there is no constitutional limit preventing a future New South Wales Parliament from amending its provisions to extend the powers to compel witnesses to attend from interstate and to provide machinery for service to occur in that situation. Indeed, there may be good reason to do so. Not only would this provide clarity in the area, as already described above, it would better facilitate the functions of the New South Wales Parliament and its committees.

### **Question 3: Common law ‘necessity powers’ and the power to compel witnesses**

The common law ‘necessity powers’ of the New South Wales Parliament are those that are ‘reasonably necessary’ to allow the Houses to perform their functions.<sup>36</sup> The nature of these powers is that they would be presumed to operate concurrently with the statutory powers, unless expressly abrogated.<sup>37</sup>

The necessity powers have, however, been said to be limited to that which is referred to as ‘protective’ or ‘self-defensive’ only.<sup>38</sup> While there remains a live question as to what amounts to protective / self-defensive, where it relates to the defence of the institution, that is not the type of power involved in the summoning of witnesses. Further, these powers have been held not to extend to those that are punitive in nature: the power to impose fines, arrest individuals or impose powers of imprisonment.<sup>39</sup> In *Egan v Willis*, explicitly considering the question of compelling non-member witnesses albeit in dicta, McHugh J indicated that in the absence of statutory authority, the Legislative Council could not compel non-members to attend and give evidence.<sup>40</sup> It would seem further unlikely that the common law powers would extend to

<sup>36</sup> *Stockdale v Hansard* (1839) 112 ER 1112, 1169 (Lord Denman CJ), referring to the UK House of Commons and adopted into the colonies in *Kielley v Carson* (1842) 13 ER 225 (Judicial Committee of the Privy Council). Confirmed in the New South Wales context specifically by the Australian High Court in *Egan v Willis* (1998) 195 CLR 424.

<sup>37</sup> See generally *Attorney-General v De Keyser’s Royal Hotel Ltd* [1920] AC 508 in relation to abrogation of fundamental constitutional powers see *Ruddock v Vadarlis* (2001) 110 FCR 491, 540 (French J), referring to *Barton v Commonwealth* (1974) 131 CLR 477, 488 (Barwick CJ).

<sup>38</sup> *Barton v Taylor* (1866) 11 AC 197, 203 (Lord Selborne).

<sup>39</sup> See further *Fenton v Hampton* (1858) 14 ER 727; *Doyle v Falconer* (1966) 16 ER 293; *Barton v Taylor* (1866) 11 AC 197; *Willis and Christie v Perry* (1912) 13 CLR 592; *Armstrong v Budd* (1969) 71 SR (NSW) 386, 403 (Wallace P); 406 (Sugarman JA); *Egan v Willis* (1998) 195 CLR 424, 447-8; 453-4 (Gaudron, Gummow and Hayne JJ). While there has been some doubt cast on the continuing relevance of this limitation, the most appropriate position for the Council to take is that set out in Stephen Frappell and David Blunt (eds) *New South Wales Legislative Council Practice* (2<sup>nd</sup> ed, Federation Press, 2021) 75, that ‘For the time being, however, in the absence of clear judicial authority to the contrary, or alternatively the enactment of express statutory provisions concerning the powers of the Houses, it must be assumed that the power of the Houses remains so constrained.’

<sup>40</sup> *Egan v Willis* (1998) 195 CLR 424, 468 (McHugh J). Although contrast the position of the Supreme Court of Prince Edward Island (Canada) in *Attorney-General (Canada) v MacPhee* [2003] PESCTD O6, [24] (Cheverie J), applying the doctrine of necessity, concluded it extended to the power to summon witnesses and have them produce documents.

compelling non-members resident out of the jurisdiction to attend and give evidence. Such an extension would be inconsistent with the presumption of State comity and the practice of the courts, detailed above.

**Question 4: Application of parliamentary privilege outside of New South Wales**

**(a) Article 9 of the Bill of Rights 1689, Section 12(1) of the Parliamentary Evidence Act, and extra-territoriality**

Parliamentary privilege in New South Wales, and more specifically the immunity of witnesses from liability for evidence provided to the Parliament and its Committees, has its source in Article 9 of the *Bill of Rights 1689*, as in force in NSW,<sup>41</sup> and s 12(1) of the *Parliamentary Evidence Act*. Before turning to these provisions in detail, it is appropriate to return first to the question of the power of the New South Wales Parliament to legislate extra-territorially in this context.

There appears to be a widespread view across the handbooks of parliamentary practice that privilege that applies to evidence given by witnesses to Houses and their committees extends only within that jurisdiction, and not to an immunity from laws outside of that jurisdiction. For instance, the *New South Wales Legislative Council Practice* (2<sup>nd</sup> ed) states:

Witnesses from another State or Territory of Australia, or another country, where there is no territorial connection with New South Wales, may only be invited to give evidence before a Council committee on a voluntary basis. Whilst fully protected in NSW in respect of evidence they may give, they cannot be protected by the NSW law of privilege in their own jurisdiction.<sup>42</sup>

While occurring in a slightly different constitutional context, Odgers Senate Practice sets out a similar position in relation to evidence taken from either Australian citizens or residents overseas, or foreigners giving evidence from overseas.<sup>43</sup> This position is evident, for instance, in the Chair's foreword to the *Senate Select Committee on a Certain Maritime Incident*, where, in the course of investigating a number of incidents at sea relating to asylum seekers attempting to enter Australian territory, none of the asylum seekers gave evidence. The Chair explained:

In the case of the Pacific solution, the Committee received correspondence from many of the asylum seekers who were on 'the overboard boat' SIEV 4. The Committee's jurisdiction is limited to Australia and its territories. These asylum seekers were in detention on Manus Island at all the relevant times of this inquiry. This meant that their evidence could not be heard under privilege, nor could the usual protections be extended to them should they be adversely treated as a consequence of what they may have said.

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<sup>41</sup> Through its adoption in the *Imperial Acts Application Act 1969* (NSW) s 6.

<sup>42</sup> Stephen Frappell and David Blunt (eds) *New South Wales Legislative Council Practice* (2<sup>nd</sup> ed, Federation Press, 2021) 807.

<sup>43</sup> Harry Evans (ed), *Odgers Australian Senate Practice* (14<sup>th</sup> ed, 2016) 570.

It has always seemed to me to be one-sided that the asylum seekers as key players in the event could not have their evidence heard and tested by the inquiry. Given the limitations it is not surprising that the asylum seekers themselves declined to participate in a telephone link-up with the Committee. ... Notwithstanding all these concerns, it is still a pity that the people at the heart of this incident and about whom allegations were made are known only by photographs, one letter and the balanced and humane description of them given to us by Commander Banks of the HMAS Adelaide.<sup>44</sup>

The Chair's statement reveals the frustration of the Committee's functions because of the perception in that context that the law of privilege did not extend outside of the jurisdiction.

Given the perceived desirability then of extending the operation of parliamentary privilege beyond the borders of the State, is it constitutionally possible?

As already set out above, a State has the constitutional power to legislate extra-territorially where there is a connection back to its jurisdiction. The extension of parliamentary privilege to evidence provided by witnesses summoned to give evidence to a State parliamentary inquiry would suggest a strong connection back to the State, indeed, to a fundamental constitutional function of the State that allows the Parliament to fulfil its legislative and oversight functions.

Has the New South Wales Parliament extended the operation of privilege in either s 12(1) of the *Parliamentary Evidence Act* or in Article 9 of the *Bill of Rights*?

Section 12(1) of the *Parliamentary Evidence Act* provides an explicit immunity against defamation for witnesses attending to give evidence before parliamentary committees:

No action shall be maintained against any witness who has given evidence, whether on oath or otherwise, under the authority of this Act, for or in respect of any defamatory words spoken by the witness while giving such evidence.

Section 12(1) is silent as to whether it extends to protecting witnesses from defamation actions under the law of a jurisdiction other than New South Wales. When the 1881 New South Wales parliamentary privileges legislation was passed, the reasons for the inclusion of s 12(1) were 'readily apparent'. The *New South Wales Legislative Council Practice* (2<sup>nd</sup> ed) explains that if the Parliament was to place on a firm footing its power to compel the attendance of witnesses to give evidence 'At the same time, the Parliament had to provide those witnesses with the assurance of full protection against legal reprisal.'<sup>45</sup> This would seem to connect the question of the power to compel witnesses to attend from out of the State with the extension of parliamentary privilege over them. As I have concluded above that the likely answer to this question is that there is not this power, this would seemingly preclude the extension of s 12(1) immunity to them.

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<sup>44</sup> *Senate Select Committee on a Certain Maritime Incident*, Main Report (23 October 2002) xv.

<sup>45</sup> Stephen Frappell and David Blunt (eds) *New South Wales Legislative Council Practice* (2<sup>nd</sup> ed, Federation Press, 2021) 95.



This leaves the question of whether Article 9 of the *Bill of Rights* retains residual protection for out of State witnesses. Article 9 provides immunity for ‘freedom of speech and debates or proceedings of Parliament’ from being ‘impeached or questioned in any court of place out or Parliament.’ This is accepted to extend to many aspects of committee proceedings, including the participation of members and witnesses in hearings.<sup>46</sup> In relation to Article 9, the question that arises is whether the courts of *another state* fall within the terms ‘any court or place out of Parliament’, or whether the intention of the Article is to regulate the horizontal relationship between the courts and legislature of a single jurisdiction.

While there is no extra-territorial limitation that would prevent the extension of Article 9’s reference to ‘any court’ to include any court in any jurisdiction in Australia, or even overseas, there would, however, be a statutory presumption that such an extension was not intended, unless done so explicitly or through necessary implication. There is no explicit extension in Article 9, which leaves reliance on implication. An extension extra-territorially could be argued to be consistent with the underlying purpose of Article 9: to ensure that the Parliament, its Houses and Committees, are able to perform their functions, including free debate on legislative proposals, review of executive action, and the taking of evidence in the conduct of inquiries, without the chilling effect of possible prosecution or other liability or victimisation. The possibility that an action might be brought in a court out of the State, for instance, for defamation because of the publication of remarks made in the course of a committee hearing by a witness in that jurisdiction would have at least some ‘chilling’ effect on the parliament’s functions. However, in the absence of clear words, it is not clear whether this would be sufficient to rebut the presumption against extra-territoriality.

What is clear is that this outcome could be – and has been – achieved co-operatively: that is, where there is consent and legislative action on the part of the other jurisdiction. We see this, for instance, in relation to the uniform defamation law. Under the scheme, absolute privilege is extended to the publication of matter in the course of the proceedings of a ‘parliamentary body’, including giving evidence.<sup>47</sup> Parliamentary body is defined to mean a parliament or legislature, a house of a parliament or legislature, a committee of a parliament or legislature or a committee of a house of houses of a parliament or legislature, in any country.<sup>48</sup> Thus, through a national uniform statutory scheme that is underpinned by a comity between the jurisdictions, inter-state protection of witnesses appearing before parliamentary committees is achieved. But this is a protection only insofar as those cooperative schemes are in place.

***(b) Can other States legislate to amend or abrogate the powers and privileges of the New South Wales Parliament***

What would occur, however, should such a co-operative scheme be absent? What would occur, for instance, if the Victorian defamation legislation were amended so as to extend absolute privilege only to publication of matter in the course of the proceedings of the

<sup>46</sup> Ibid, 97. See also s 16(2) of the *Parliamentary Privileges Act 1987* (Cth) which articulates such actions as being within the proceedings of parliamentary for the purposes of Article 9. Of course not directly applicable to NSW, but to the extent it reflects the common law position, it would apply.

<sup>47</sup> See, eg, *Defamation Act 2005* (NSW) s 27; *Defamation Act 2005* (Vic) s 27.

<sup>48</sup> See eg, *Defamation Act 2005* (NSW) s 4; *Defamation Act 2005* (Vic) s 4.

Victorian parliament. This is not a situation in which there needs to be resolved an ‘inconsistency’ between the New South Wales and other state laws.<sup>49</sup> This is because, even in the absence of the explicit extension of Article 9 to protection in any court in Australia, there are two reasons why the laws of another State would not apply to witnesses giving evidence to a committee of the New South Wales Legislative Council.

(i) *Presumption of statutory interpretation*

First, there is likely to operate a presumption of statutory interpretation that a State Parliament does not intend its legislation to apply in a way that interferes with or abrogates the privileges of the Parliament of another State in the federation, unless it does so expressly or by necessary intendment. There is a well-established presumption that a Parliament does not intend to amend or abrogate its own powers and privileges unless it does so explicitly or by necessary intendment.<sup>50</sup> This reflects the constitutional importance of those powers and privileges. There would be a similarly strong argument that such a presumption operates across the States of the Federation. This is supported by the continuation of the relatively autonomous constitutional systems of the States in the Federation, as seen by the continuation of the State Parliaments, and their Constitutions, in ss 106 and 107 of the *Commonwealth Constitution*.

(ii) *Constitutional restriction*

Second, there is likely a constitutional restriction on the application of liability, at least from laws of other States in the Australian federation.

This is a question as to whether one State has the legislative capacity to affect the constitutional functioning of another State in the federal polity. While the existence of such immunity has not been confirmed by the High Court, it has been the subject of *obiter*, and academic, comment.<sup>51</sup> More specifically, the question is whether there is an immunity from the application of the laws of one State that impose liabilities on matters that relate to proceedings of Parliaments in another State. This restriction would apply irrespective of the fact that a State Parliament may choose to limit or remove the operation of privilege in *its*

<sup>49</sup> See further discussion of State-State inconsistency, and the ambiguous, and largely unsatisfactory, nature of the law for resolving that in Geoffrey Lindell and Anthony Mason, ‘The Resolution of Inconsistent State and Territory Legislation’ (2010) 38 *Federal Law Review* 391; Greg Taylor, *The Constitution of Victoria* (Federation Press, 2006) 288-290.

<sup>50</sup> See *Duke of Newcastle v Morris* (1870) LR 4 HL 661, 668 (Lord Hatherley).

<sup>51</sup> See *Mobil Oil Australia Pty Ltd v Victoria* (2002) 211 CLR 1, 25-6 [15] (Gleeson CJ) see also 50 (Kirby J). See also *State Authorities Superannuation Board v Commissioner of State Taxation (WA)* (1996) 189 CLR 253, 288-9 (McHugh and Gummow JJ); *BHP Billiton Ltd v Schultz* (2004) 221 CLR 400, 473-4 [198]-[200] (Callinan J); *Re Residential Tenancies Tribunal (NSW) and Henderson; Ex parte Defence Housing Authority* (1997) 190 CLR 410, 440 (Dawson, Toohey and Gaudron JJ), 451 (McHugh J). In relation to academic commentary, see Bradley Selway, *The Constitution of South Australia* (Federation Press, 1997) 73; Alex C Castles, ‘Limitations on the Autonomy of the Australian States’ (1962) *Public Law* 175, 199; Geoffrey Lindell, ‘Advancing the Federal Principle through the Intergovernmental Immunity Doctrine’ in H P Lee and Peter Gerangelos (eds), *Constitutional Advancement in a Frozen Continent – Essays in Honour of George Winterton* (Federation Press, 2009) 23, 39-40; Adam Webster, ‘Sharing water from Transboundary Rivers: Limits on State Power’ (2016) 44 *Federal Law Review* 1, 41-42.

own jurisdiction.<sup>52</sup> Rather, the restriction would operate to ensure that each State Parliament in the Federation is free to exercise its powers and privileges in the manner it chooses.

As explained above, the power of committees to conduct inquiries support *the constitutional functions of the Parliament*. There is currently no judicial consideration of the constitutional limits that might protect witnesses giving evidence in New South Wales against liability arising in another State. These issues are related, but distinct, from those that would arise in relation to any attempt by a State to exclude Commonwealth laws, that have been considered by others.<sup>53</sup> Some guidance can be taken from the 1985 position that was adopted by the Senate Standing Committee on Constitutional and Legal Affairs in its report *Commonwealth Law Making Power and the Privilege of Freedom of Speech in State Parliaments*.<sup>54</sup> Despite Solicitor-General advice to the contrary, suggesting that the Commonwealth Parliament had the constitutional power to override, by express provision, the privilege of freedom of speech in State Parliaments, the Committee's view (by a majority of 4 of 6 members) was that 'freedom of speech in state parliaments is an essential part of a state constitution and cannot be overridden by a Commonwealth law.'<sup>55</sup> This position is consistent with the High Court's development of the *Melbourne Corporation* doctrine,<sup>56</sup> and is reflected in other Commonwealth committee views.<sup>57</sup>

Given the close connection to the constitutional functions of the Parliament, there is a strong argument for the existence of an inter-state immunity that protects the constitutional functions of the States in the Federation. Given the close connection to the constitutional functions of the State, this immunity would attach to the privileged nature of the proceedings of Parliament in one State against liability incurred in another State.

Friday, 9 April 2021

Professor Gabrielle Appleby  
UNSW Law & Justice

<sup>52</sup> And is separate also to the argument, rejected by the New South Wales Supreme Court, that there is a constitutional requirement that State Parliaments retain their privilege: *Arena v Nadar* (1997) 42 NSWLR 427, 434.

<sup>53</sup> This would raise constitutional issues under s 109 of the Constitution, as well as a possible intergovernmental immunities question, and possibly the scope of the protection of the implied protection of freedom of political communication. See further Enid Campbell, 'Commonwealth Powers and the Privileges of State Parliaments' (1999) 3 *University of Queensland Law Journal* 201. In the Canadian context note the decision in *Attorney-General (Canada) v MacPhee* [2003] PESCOTD O6, [44] (Cheverie J), finding that the Prince Edward Island Legislative Assembly had a constitutionally inherent power to summons witnesses who were federal officials.

<sup>54</sup> Parliamentary Papers 235/1985.

<sup>55</sup> See further Harry Evans (ed), *Odgers Australian Senate Practice* (14<sup>th</sup> ed, 2016) 66.

<sup>56</sup> *Melbourne Corporation v Commonwealth* (1947) 74 CLR 31; most recently reworked in *Austin v Commonwealth* (2003) 215 CLR 185.

<sup>57</sup> See also Senate Select Committee on the Functions, Powers and Operation of the Australian Loan Council, Interim Report, March 1993, Appendix 5, which states: 'implications arising from the federal system might prevent Commonwealth parliamentary action which threatened the integrity and functioning of the States or discriminated against them.'



## Appendix 4 Minutes

### Minutes no. 1

Thursday 9 April 2020

Select Committee on the Impact of Technological and Other Change on the Future of Work and Workers in  
New South Wales

Via teleconference, 10.33 am

#### 1. Members present

Mr Mookhey, *Chair*

Mr Banasiak, *Deputy Chair*

Mr Buttigieg (participating)

Mr Farraway

Mrs Houssos

Mrs Maclaren-Jones

Mr Mallard

Mr Pearson

Mr Searle

Mr Shoebridge

#### 2. Tabling of resolution establishing the committee

The Chair tabled the resolution of the House establishing the committee on 24 March 2020, which reads as follows:

- (1) That a select committee be established to inquire into and report on the impact of technological and other change on the future of work and workers in New South Wales, with particular reference to:
  - (a) changes in the earnings, job security, employment status and working patterns of people in New South Wales;
  - (b) the extent, nature and impact on both the New South Wales labour market and New South Wales economy of:
    - i. the "on-demand" or "gig-economy";
    - ii. the automation of work;
    - iii. the different impact of (i) and (ii) on regional New South Wales; and
    - iv. the wider effects of (i) and (ii) on equality, government and society.
  - (c) the impact of the "on-demand" or "gig economy" and the automation of work on long-term productivity growth, economic growth, as well as the overall attractiveness of New South Wales as an investment destination for the advanced technological sector;
  - (d) the effectiveness of Commonwealth and New South Wales laws in promoting fair competition and preventing monopolies and other anti-competitive behaviour in the "on demand" or "gig-economy";
  - (e) the adequacy of the New South Wales skills and education system in helping people adjust to the changing nature of work;
  - (f) the impact of the "on-demand" or "gig economy" and the automation of work on:
    - i. accident compensation schemes, payroll or similar taxes; and
    - ii. Commonwealth taxes which support New South Wales Government expenditures.
  - (g) the application of workplace laws and instruments to people working in the "on-demand" or "gig-economy", including but not limited to:
    - i. the legal or work status of persons working for, or with, businesses using online platforms;
    - ii. the application of Commonwealth and New South Wales workplace laws and instruments to those persons, including superannuation and health and safety laws;
    - iii. whether contracting or other arrangements are being used to avoid the application of workplace laws and other statutory obligations;

- iv. the effectiveness of the enforcement of those laws and regulations;
    - v. regulatory systems in other Australian jurisdictions and in other countries, including how other jurisdictions regulate the on-demand workforce and are adapting to the automation of work; and
    - vi. Australia's obligations under international law, including International Labour Organization conventions.
  - (h) whether current laws and workplace protections are fit for purpose in the twenty-first century, including workplace surveillance laws and provisions dealing with workplace change obligations and consequences;
  - (i) whether workers should have agency over the way the data they generate at work is used and, if so, what legal framework is required to provide this;
  - (j) how employers and other businesses should manage and use the information generated by the workforce;
  - (k) how government as a best practice employer should manage and use the information generated by its workforce;
  - (l) whether, and what, legislative or other measures should be taken to:
    - i. reform workplace laws and instruments to account for the emergence of the "on demand" or "gig economy" and the automation of work;
    - ii. reform the skills and education systems to help people adjust to the changing nature of work;
    - iii. reform taxation laws to promote economic growth and protect public finances;
    - iv. reform competition laws to promote fair competition and prevent monopolies in the on-demand or gig-economy; and
    - v. reform accident compensation schemes and other social insurance schemes to account for the emergence of the "on-demand" or "gig economy" and the automation of work.
  - (m) any other related matter.
- (2) That, notwithstanding anything to the contrary in the standing orders, the committee consist of nine members comprising:
- (a) three government members, being nominated by the Leader of the Government;
  - (b) three opposition members, being the Hon Daniel Mookhey and two members nominated by the Leader of the Opposition, and
  - (c) three crossbench members, being Mr David Shoebridge, the Hon Mark Pearson and the Hon Mark Banasiak.
- (3) That the Chair of the committee be the Hon Daniel Mookhey and the Deputy Chair be the Hon Mark Banasiak.
- (4) That, notwithstanding anything to the contrary in the standing orders, at any meeting of the committee, any four members of the committee will constitute a quorum.
- (5) That, unless the committee decides otherwise:
- (a) submissions to inquiries are to be published, subject to the Committee Clerk
  - (b) checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration;
  - (c) the Chair's proposed witness list is to be circulated to provide members with an opportunity to amend the list, with the witness list agreed to by email, unless a member requests the Chair to convene a meeting to resolve any disagreement;
  - (d) the sequence of questions to be asked at hearings is to alternate between Government, Opposition and crossbench members, in order determined by the committee, with equal time allocated to each;
  - (e) transcripts of evidence taken at public hearings are to be published;
  - (f) supplementary questions are to be lodged with the Committee Clerk within two days, excluding Saturday and Sunday, following the receipt of the hearing transcript, with witnesses

requested to return answers to questions on notice and supplementary questions within 21 calendar days of the date on which questions are forwarded to the witness; and

- (g) answers to questions on notice and supplementary questions are to be published, subject to the Committee Clerk checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration.

### **3. Conduct of committee proceedings – media**

Resolved, on the motion of Mr Searle: That unless the committee decides otherwise, the following procedures are to apply for the life of the committee:

- the committee authorise the filming, broadcasting, webcasting and still photography of its public proceedings, in accordance with the resolution of the Legislative Council of 18 October 2007
- the committee webcast its public proceedings via the Parliament’s website, where technically possible
- the committee adopt the interim guidelines on the use of social media and electronic devices for committee proceedings, as developed by the Chair’s Committee in May 2013
- media statements on behalf of the committee be made only by the Chair.

### **4. Inquiry into the impact of technological and other change on the future of work and workers in New South Wales**

#### **4.1 Conduct of the inquiry**

The Chair briefed the committee on his proposals for the conduct of the inquiry:

- background paper from the library by the end of May, to be requested by the chair and be shared with committee members
- discussion paper to be released in June, prior to submissions closing, to draw on the background paper and include specific questions to which the committee is seeking answers
- interim reports to be tabled March/April 2021, focusing on evidence that reflects the current regulatory and practical landscape for workers, and potentially highlighting areas for recommendations
- final report to be tabled November 2021, containing recommendations for policy change.

#### **4.2 Proposed timeline**

Resolved, on the motion of Mr Pearson: That the committee adopt the following timeline for the administration of the inquiry:

- Submission close: Monday 31 August 2020
- Three hearings: Monday 12 October, Monday 19 October, Monday 9 November 2020, subject to members' availability
- Reserve hearing: Monday 16 November 2020
- Interim reports: March/April 2021
- Final report: November 2021.

#### **4.3 Stakeholder list**

Resolved, on the motion of Mr Mallard: That the secretariat email members with a list of stakeholders to be invited to make written submissions, and that members have two days from the email being circulated to amend the list or nominate additional stakeholders.

#### **4.4 Advertising**

All inquiries are advertised via Twitter, Facebook, stakeholder letters and a media release distributed to all media outlets in New South Wales.

#### **4.5 Discussion paper**

Resolved, on the motion of Mr Mallard: That the secretariat prepare a discussion paper for release in June, subject to approval of the committee, to assist in the making of submissions.

#### 4.6 Note on website and media release

Resolved, on the motion of Mr Searle: That the secretariat add a note on the committee's webpage and in its initial media release that the inquiry will be focusing on policy issues and is not intended to be a forum to resolve individual grievances.

#### 5. Adjournment

The committee adjourned at 10.50 am, *sine die*.

Laura Ismay

**Committee Clerk**

#### Minutes no. 2

Wednesday 23 September 2020

Select Committee on the Impact of Technological and Other Change on the Future of Work and Workers in New South Wales

Members' Lounge, Parliament House, Sydney at 1.36 pm

#### 1. Members present

Mr Mookhey, *Chair*

Mr Banasiak, *Deputy Chair* (from 1.40 pm)

Mr Fang

Mrs Houssos

Mrs Maclaren-Jones

Mr Mallard

Mr Pearson

Mr Searle

Mr Shoebridge

#### 2. Draft minutes

Resolved, on the motion of Mrs Houssos: That draft minutes no. 1 be confirmed.

#### 3. Correspondence

The committee noted the following correspondence:

##### **Received:**

- 3 August 2020 – Letter from Hon Don Harwin MLC, Leader of the Government in the Legislative Council, advising that Mr Fang will replace Mr Farraway on the Select Committee on the impact of technological and other change on future work and works in New South Wales.

#### 4. Inquiry into the impact of technological and other change on the future of work and workers in New South Wales

##### 4.1 Provision of documents to participating member

Resolved, on the motion of Mr Fang: That Ms Abigail Boyd MLC, who has advised the committee that she intends to participate for the duration of the inquiry into the impact of technological and other change on future work and workers in New South Wales, be provided with copies of all inquiry related documents, including meeting papers, unpublished submissions and other committee documents.

##### 4.2 Camera operator arrangements for committee hearings

The committee noted camera operator arrangements for committee hearings.

##### 4.3 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submissions nos. 1-19, 21-28.



#### 4.4 Confidential submissions

The committee noted that the author of submission no 20 had requested that the submission be kept confidential. Noting that the submission was of considerable detail and appeared useful to the inquiry, the committee proposed that the Chair write to the author to discuss its publication status.

Resolved, on the motion of Mr Mallard: That the Chair write to the submission author to inform them of the committee's preference to publish the submission and invite them to redact any relevant sections.

#### 4.5 Consideration of hearing dates

Resolved, on the motion of Mrs Houssos: That the committee proceed with holding public hearings on Monday 9 November and Monday 16 November and that the inquiry website be updated to reflect these dates.

#### 4.6 Correspondence with stakeholders

The committee noted that a number of stakeholders did not respond to the committee's invitation to make a submission to the inquiry. The Chair also proposed inviting Revenue NSW and Ms Natalie James, former NSW Fair Work Ombudsman to make a submission to the inquiry.

Resolved, on the motion of Mrs Houssos: That:

- The committee write to those stakeholders who did not respond to the committee's invitation and to invite them again to make a submission to the inquiry
- Revenue NSW and Ms Natalie James, former NSW Fair Work Ombudsman be invited to make a submission to the inquiry.

#### 4.7 Discussion paper

Resolved, on the motion of Mr Searle: That:

- Proposed amendments to the discussion paper be provided by email by Wednesday 30 September 2020 and circulated to the committee, and
- The committee agree to publication of the discussion paper via email, unless a member raises any concerns.

### 5. Adjournment

The committee adjourned at 1.46 pm.

Laura Ismay

**Committee Clerk**

### Minutes no. 3

Monday 9 November 2020

Select Committee on the Impact of Technological and Other Change on the Future of Work and Workers in New South Wales

Macquarie Room, Parliament House, Sydney at 8.48 am

#### 1. Members present

Mr Mookhey, *Chair* (until 4.00 pm)

Mr Banasiak, *Deputy Chair*

Mr Donnelly (participating until 2.39 pm, substituting for Mr Searle from 2.39 pm)

Mr Fang

Mrs Houssos (until 8.50 am, and from 10.01 am to 3.09 pm)

Mrs Maclaren-Jones

Mr Mallard

Mr Pearson (until 4.02 pm)

Mr Searle (until 2.39 pm)

Mr Shoebridge (from 9.01 am to 11.50 am, and from 1.30 pm to 3.01 pm)

**2. Draft minutes**

Resolved, on the motion of Mr Fang: That draft minutes no. 2 be confirmed.

**3. Correspondence**

The committee noted the following correspondence:

***Received:***

- 28 August 2020 – Email from Ms Lian Drinan, Legal and Compliance Officer, Airtasker, to the secretariat, declining to make a submission to the inquiry
- 7 October 2020 – Email from Safe Work Australia, to the secretariat, declining to make a submission to the inquiry
- 7 October 2020 – Email from Mr Isaac Jeffrey, Head of Government Relations, Ola Cabs, to the secretariat, confirming that the Ola submission be published as public document
- 19 October 2020 – Email from Ms Natalie James, Former Commonwealth Fair Work Ombudsman, to the secretariat, declining invitation to appear as a witness at the hearing on 9 November
- 22 October 2020 – Email from the Office of the Hon Mark Buttigieg MLC, Opposition Whip, to the secretariat, advising that the Hon Greg Donnelly MLC will be a participating member for the duration of the inquiry
- 23 October 2020 – Email from Mr Ruwan Subasinghe, Legal Advisor, International Transport Workers' Union, to the secretariat, advising that the organisation has no available representatives to appear as witnesses at the hearing on 16 November
- 5 November 2020 – Email from the Office of Ms Abigail Boyd MLC, to the secretariat, advising that Ms Boyd will no longer be a participating member of the inquiry.

***Sent:***

- 1 October 2020 – Letter from Chair, to Ms Ann Tan, Chief of Staff, Ola Cabs, requesting Ola reconsider the publication status of its submission.

**4. Provision of documents to participating member**

Resolved, on the motion of Mr Banasiak: That the Hon Greg Donnelly MLC, who has advised the committee that he intends to participate for the duration of the inquiry into the impact of technological and other change on future work and workers in New South Wales, be provided with copies of all inquiry related documents, including meeting papers, unpublished submissions and other committee documents.

**5. Participating member – Ms Abigail Boyd MLC**

The committee noted correspondence from the Office of Ms Abigail Boyd MLC, dated 5 November 2020, that she will no longer be a participating member for the inquiry.

**6. Public submissions**

The committee noted that the following submission no. 29 was published by the committee clerk under the authorisation of the resolution appointing the committee.

Resolved, on the motion of Mrs Maclaren-Jones: That the committee authorise the publication of submission nos. 31-33.

**7. Partially confidential submissions**

Resolved, on the motion of Mr Pearson: That the committee authorise the publication of submission no. 30, with the exception of identifying and/or sensitive information which are to remain confidential, as per the recommendation of the secretariat.

**8. Public hearing**

Witnesses, the public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Malcolm Mackenzie, Rideshare Driver
- Mr Diego Franco, Food Delivery Worker
- Mr Esteban Salazar, Food Delivery Worker
- Mr Steve Khouw, Food Delivery Worker.

Mr Mackenzie tendered the following documents:

- Screenshots of dealings with rideshare platform.

The evidence concluded and the witnesses withdrew.

The following witnesses were admitted, sworn and examined.

- Mr Mark Morey, Secretary, Unions NSW
- Mr Thomas Costa, Assistant Secretary, Unions NSW
- Ms El Leverington, Legal/Industrial Officer, Unions NSW.

The evidence concluded and the witnesses withdrew.

The following witnesses were admitted, sworn and examined:

- Mr Simon Smith, Managing Director, Ola Australia and New Zealand
- Ms Ann Tan, Head of Business Excellence and Legal, Ola Australia and New Zealand.

The evidence concluded and the witnesses withdrew.

The following witness was admitted, sworn and examined:

- Ms Lihong Wei, Widow of Mr Xiaojun Chen, Food Delivery Worker.

Ms Tong Chen, Multicultural NSW, was present as an interpreter. She was admitted and sworn.

The evidence concluded and the witness withdrew.

The following witnesses were admitted, sworn and examined:

- Ms Kate Foy, Deputy Secretary, Community and Engagement, Department of Premier and Cabinet
- Mr Charlie Heuston, A/Executive Director – Employee Relations, Community Engagement, Department of Premier and Cabinet.

The evidence concluded and the witnesses withdrew.

The following witnesses were admitted, sworn and examined:

- Mr Mark Frost, Chief Economist, Business NSW
- Mr Luis Izzo, Representative, Australian Business Industrial.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4.08 pm.

## 9. **Tendered documents**

The committee deferred consideration, until Monday 16 November 2020, of the acceptance and publication of the following document tendered during the public hearing:

- Screenshots of dealings with rideshare platform, tendered by Mr Mackenzie.

## 10. **Letter to Airtasker**

Resolved, on the motion of Mr Mallard: That the Chair, on behalf of the committee, write to Airtasker attaching a copy of the transcript from the hearing on 9 November 2020, requesting that it make a submission to the inquiry and advising of the committee's intention to request that it appear as a witness at a future hearing for the inquiry.

## 11. Adjournment

The committee adjourned at 4.10 pm.

Helen Hong  
Committee Clerk

## Minutes no. 4

Monday 16 November 2020

Select Committee on the Impact of Technological and Other Change on the Future of Work and Workers in New South Wales

Macquarie Room, Parliament House, Sydney at 9.17 am

### 1. Members present

Mr Mookhey, *Chair*

Mr Banasiak, *Deputy Chair* (from 9.48 am to 3.45 pm)

Mr Fang

Mrs Houssos

Mrs Maclaren-Jones (until 9.25 am, and from 1.45 pm to 5.02 pm)

Mr Mallard (until 11.30 am, and from 2.49 pm)

Mr Searle (until 3.09 pm)

Mr Shoebridge (from 9.34 am to 11.09 am, and from 4.00 pm)

### 2. Apologies

Mr Donnelly (participating)

Mr Pearson

### 3. Draft minutes

Resolved, on the motion of Mr Mallard: That draft minutes no. 3 be confirmed.

### 4. Correspondence

The committee noted the following correspondence:

#### *Received:*

- 16 November 2020 – Email from Ms Luna Wei, Delivery Manager, Hungry Panda, to the secretariat, providing reasons as to her non-attendance at the hearing on 16 November.

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of the email from Ms Luna Wei, dated 16 November 2020.

### 5. Tended documents from 9 November 2020

Resolved, on the motion of Mr Searle: That the committee accept and publish the following document tendered during the public hearing on 9 November, with identifying details removed:

- Screenshots of dealings with rideshare platform, tendered by Mr Malcolm Mackenzie, Rideshare Driver.

### 6. Public submissions

Resolved, on the motion of Mrs Houssos: That the committee authorise the publication of submission nos. 34-37.

### 7. Public hearing

Witnesses, the public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Mr Hugh McMaster, Secretary and Treasurer, Australian Road Transport Industrial Organisation NSW Branch.

The evidence concluded and the witness withdrew.

The following witnesses were admitted, sworn and examined.

- Mr Michael Kaine, National Secretary, Transport Workers' Union
- Mr Richard Olsen, Secretary, NSW Branch of Transport Workers' Union
- Mr Jack Boutros, Strategic Campaigner, Transport Workers' Union.

Mr Olsen tendered the following documents:

- Rideshare Driver Survey
- Food Delivery Rider/Driver Survey.

The evidence concluded and the witnesses withdrew.

The Chair made a statement regarding the non-attendance of Ms Luna Wei, Delivery Manager, Hungry Panda, and the committee adjourned until the next session of witnesses.

The following witnesses were admitted, sworn and examined:

- Mr Mark Goodsell, Head, NSW Australian Industry Group
- Mr Stephen Smith, Head, National Workplace Relations Policy, NSW Australian Industry Group.

The evidence concluded and the witnesses withdrew.

The following witnesses were admitted, sworn and examined:

- Mr Peter Dunphy, Executive Director, Compliance and Dispute Resolution, SafeWork NSW
- Ms Skye Buatava, Director, Research and Evaluation, SafeWork NSW.

The evidence concluded and the witnesses withdrew.

The following witnesses were admitted, sworn and examined:

- Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority (SIRA)
- Mr Darren Parker, Executive Director, Workers and Home Building Compensation Regulation, SIRA
- Dr Petrina Casey, Director, Health Policy, Prevention and Supervision, SIRA
- Mr Rob Craig, Interim Group Executive, Personal Injury, icare
- Dr Chris Colquhoun, Chief Medical Officer, icare.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 5.13 pm.

## 8. **Tendered documents**

Resolved, on the motion of Mrs Houssos: That the committee accept and publish the following document(s) tendered during the public hearing:

- Rideshare Driver Survey, tendered by Mr Richard Olsen, Transport Workers' Union
- Food Delivery Rider/Driver Survey, tendered by Mr Richard Olsen, Transport Workers' Union.

## 9. **Letter to Hungry Panda**

Resolved, on the motion of Mr Shoebridge: That the Chair, on behalf of the committee, write to Ms Luna Wei, Delivery Manager, Hungry Panda, expressing the committee's disappointment in her non-attendance at the public hearing today and of its intention to invite her to the next hearing for the inquiry, noting the committee's powers to issue a summons under the *Parliamentary Evidence Act 1901*.

## 10. Adjournment

The committee adjourned at 5.19 pm.

Helen Hong  
**Committee Clerk**

## Minutes no. 5

Friday 5 February 2020

Select Committee on the Impact of Technological and Other Change on the Future of Work and Workers in New South Wales

Webex and Room 1043, Parliament House, Sydney at 12.18 pm

### 1. Members present

Mr Mookhey, *Chair*

Mr Banasiak, *Deputy Chair*

Mr Fang

Mrs Houssos

Mrs Maclaren-Jones

Mr Mallard

Mr Pearson

Mr Searle

Mr Shoebridge

### 2. Apologies

Mr Donnelly (participating)

### 3. Draft minutes

Resolved, on the motion of Mr Mallard: That draft minutes no. 4 be confirmed.

### 4. Correspondence

The committee noted the following correspondence:

#### *Received:*

- 23 November 2020 – Letter from Mr Isaac Jeffrey, Head of Government Relations, Ola Australia and New Zealand, to the Chair, advising of Mr Simon Smith (CEO) and his resignation from the company
- 1 December 2020 – Email from Ms Luna Wei, Delivery Manager, Hungry Panda, to the Chair, confirming that a Hungry Panda representative will attend the hearing on 23 February 2021
- 19 January 2021 – Email from Mr Mark Simpson, General Counsel and Company Secretary, Airtasker, to the secretariat, advising that Airtasker will submit its submission to the inquiry by March 2021.

#### *Sent:*

- 27 November 2020 – Letter from the Chair, to Ms Luna Wei, Delivery Manager, Hungry Panda, requesting appearance at the next hearing on 23 February 2021
- 11 December 2020 – Letter from the Chair, to Ms Lian Drinan, Legal and Compliance Officer, Airtasker, requesting that Airtasker reconsider making a submission to the inquiry and advising of the committee's intention to invite it to attend a future hearing.

Resolved, on the motion of Mr Shoebridge: That on behalf of the committee, the Chair write to Ola, requesting that the company provide a response to all questions taken on notice by the former CEO, Mr Simon Smith.

Resolved, on the motion of Mr Shoebridge:

1. That the Chair write to the Delivery Manager of Hungry Panda, on behalf of the committee, reminding her of the committee's power to summons witnesses and compel their attendance to give evidence.

2. That, in the event of Hungry Panda declining this invitation or further non-attendance, the committee authorise the Chair to issue a summons to compel the attendance of Ms Luna Wei, Delivery Manager, Hungry Panda to give evidence.

**5. Public submissions**

The committee noted that submission nos 39-40 were previously published by the committee clerk under the authorisation of the resolution appointing the committee.

**6. Answers to questions on notice**

The committee noted that the following answers to questions on notice were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Mr Esteban Salazar, Food Delivery Worker, received 9 November 2020
- Mr Malcolm Mackenzie, Rideshare Driver, received 10 November 2020
- SafeWork NSW, received 17 November 2020
- Unions NSW, received 21 December 2020
- Mr Steve Khouw, Food Delivery Worker, received 11 January 2021
- State Insurance Regulatory Authority (SIRA), received 13 January 2021
- Australian Industry Group, received 14 January 2021
- Business NSW, received 18 January 2021
- Transport Workers' Union, received 20 January 2021
- icare, received 20 January 2021
- Department of Premier and Cabinet – Employee Relations, received 22 January 2021.

It also noted that, as previously advised, the following organisations were granted extensions for the return of some or all of their answers to questions on notice until February:

- Australian Road Transport Industrial Organisation
- SIRA
- icare.

**7. Briefing from Ms Natalie James, Former Fair Work Ombudsman**

Resolved, on the motion of Mrs Houssos: That Ms Natalie James be invited to provide a private briefing on her report into the Victorian On-Demand Workforce.

**8. Hearings and site visits**

The committee noted that it had previously agreed via email to hold two further hearings, which have been confirmed for the following dates:

- Monday, 19 April 2021
- Monday, 17 May 2021.

Resolved, on the motion of Mr Searle: That the committee conduct a site visit to the Amazon Distribution Centre in Western Sydney on the morning of Monday, 17 May 2021, and return to Parliament House for a half-day hearing.

Resolved, on the motion of Mr Searle: That:

- the committee hold two further full hearings and one half-day hearing over the months of July to October 2021, and
- that dates for hearings be determined by the Chair after consultation with members regarding their availability.

**9. Proposed witnesses**

The committee noted that the following witnesses be invited to give evidence to committee on the scheduled hearing days.

**Tuesday, 23 February 2021**

<b>Witness and allocated time</b>	<b>Submission no.</b>
Hungry Panda (1 hour)	No submission
Restaurant and Catering Industry Association (1 hour)	22
Unions panel (1 hour)	
- Australian Manufacturing Workers' Union	No submission
- Australian Workers' Union	23
Revenue NSW (1 hour)	34

**Tuesday, 30 March 2021**

<b>Witness and allocated time</b>	<b>Submission no.</b>
Deliveroo (1 hour)	10
Airtasker (1 hour)	Pending
Supermarket panel (1 hour)	
- Coles	No submission
- Woolworths	No submission
- Aldi	No submission
Unions panel (1 hour)	
- Shop, Distributive and Allied Employee's Association	19
- Public Service Association	18
NSW Innovation and Productivity Council and NSW Productivity Commission (1 hour)	39 (joint sub)
Panel of experts – TBC (1 hour)	

**Monday, 19 April 2021**

<b>Witness and allocated time</b>	<b>Submission no.</b>
Uber (1 hour)	13
Farmers panel (1 hour)	
- National Farmers' Federation	No submission
- NSW Farmers' Association	Pending
- Dairy Connect	No submission
International Transport Workers' Federation (1 hour)	29
ACCC/Department of Education/Transport for NSW (1 hour)	Pending
Panel of experts – TBC (1 hour)	



**Monday, 17 May 2021 (half-day)**

<b>Witness and allocated time</b>	<b>Submission no.</b>
Mabel (1 hour)	No submission
Unions panel (1 hour) - United Workers' Union - Health Services Union	6 No submission
Other witnesses TBC	

**10. Letter to Coles, Woolworths and Aldi**

Resolved, on the motion of Mr Fang: That the Chair, on behalf of the committee, write to Coles Group, Woolworths Group and Aldi, requesting each company provide a submission to the inquiry and inviting them to give evidence on 30 March 2021.

**11. Adjournment**

The committee adjourned at 12.32 pm .

Helen Hong  
**Committee Clerk**

**Minutes no. 6**

Tuesday 23 February 2021

Select Committee on the Impact of Technological and Other Change on the Future of Work and Workers in New South Wales

Jubilee Room, Parliament House, Sydney at 9.02 am

**1. Members present**

Mr Mookhey, *Chair*  
Mr Banasiak, *Deputy Chair*  
Mr Donnelly (participating)  
Mr Fang  
Mrs Houssos (via Webex)  
Mrs Maclaren-Jones  
Mr Mallard (from 9.34 am to 11.30 am, and from 12.16 pm)  
Mr Pearson (from 9.16 am to 12.40 pm, and from 2.10 pm)  
Mr Searle  
Mr Shoebridge (until 12.40 pm)

**2. Public hearing**

Witnesses, the public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were admitted, sworn and examined:

- Mr Jun Yang, Hungry Panda delivery driver
- Mr Fang Sun, Hungry Panda delivery driver.

Ms Helen Yang, Associated Translators and Linguists (ATL), was present as an interpreter. She was admitted and sworn.

The evidence concluded and the witnesses withdrew.

The following witnesses were admitted, sworn and examined:

- Mr Wes Lambert, Chief Executive Officer, Restaurant and Catering Industry Association
- Mr Thomas Green, Head of Policy, Government and Public Affairs, Restaurant and Catering Industry Association.

The evidence concluded and the witnesses withdrew.

The following witness was admitted, sworn and examined:

- Ms Tina Sun, Human Resources Manager, Hungry Panda.

The evidence concluded and the witness withdrew.

The following witnesses were admitted, sworn and examined:

- Ms Chloe Smith, Executive Support and Projects Officer, Australian Manufacturing Workers' Union
- Ms Abha Devasia, National Research Coordinator, Australian Manufacturing Workers' Union
- Ms Claire Pullen, Project Officer, Public Service Association of New South Wales
- Mr Shay Deguara, Manager of Industrial Support, Public Service Association of New South Wales.

The evidence concluded and the witnesses withdrew.

The following witnesses were admitted, sworn and examined:

- Mr Scott Johnston, Deputy Secretary, Chief Commissioner of State Revenue, Revenue NSW
- Mr Cullen Smythe, Commissioner of State Revenue, Revenue NSW.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 2.43 pm.

### 3. **Tendered documents**

Resolved, on the motion of Mr Donnelly: That the committee accept the following document tendered during the public hearing on 23 February:

- icare workers insurance documents relating to Hungry Panda, tendered by Mr David Shoebridge MLC.

### 4. **Previous minutes**

Resolved, on the motion of Mrs Maclaren-Jones: That draft minutes no. 5 be confirmed.

### 5. **Correspondence**

The committee noted the following items of correspondence:

#### ***Received:***

- 10 February 2021 – Letter from Ms Ann Tan, Head of Legal and Business Excellence, Ola Australia, to the Chair, providing further information following the hearing on 9 November 2020
- 12 February 2021 – Email from Ms Annabel Johnson, Head of Policy and Advocacy, NSW Farmers, to the secretariat, declining to make a submission to the future of work inquiry.
- 22 February 2021 – Email from Ms Vittoria Bon, Government and Industry Relations Manager, Corporate Affairs, Coles Group, to the secretariat, declining committee's invitation to make a submission or nominate witnesses for the hearing on 30 March 2021
- 23 February 2021 – Email from Mr Christian Bennett, Group Head of Reputation, Government Relations and Industry Affairs, Woolworths Group, to the secretariat, advising that Woolworths plan to make a submission to the inquiry but declining invitation to nominate witnesses for the hearing on 30 March 2021
- 23 February 2021 - Email from Mr Adrian Christie, Director of Customer Relations, Aldi, to the secretariat, declining committee's invitation to make a submission or nominate witnesses for the hearing on 30 March 2021.

**Sent:**

- 8 February 2021 – Letter from the Chair, to Ms Ann Tan, Head of Legal and Business Excellence, Ola Australia, following up on additional information following the hearing on 9 November 2020
- 8 February 2021 – Letter from the Chair, to Ms Luna Wei, Delivery Manager, Hungry Panda, formally inviting Hungry Panda to nominate witnesses for the hearing on 23 February 2021
- 9 February 2021 – Letter from the Chair, to Ms Vittoria Bon, Government and Industry Relations Manager, Corporate Affairs, Coles, requesting that Coles make a submission and nominate witnesses for the hearing on 30 March 2021
- 9 February 2021 – Letter from the Chair, to Mr Christian Bennett, Group Head of Reputation, Government Relations and Industry Affairs, Woolworths Group, requesting that Woolworths make a submission and nominate witnesses for the hearing on 30 March 2021
- 9 February 2021 – Letter from the Chair, to Mr Adrian Christie, Director, Customer Relations, Aldi, requesting that Aldi make a submission and nominate witnesses for the hearing on 30 March 2021.

Resolved, on the motion of Mr Banasiak: That the Chair, on behalf of the committee, write to NSW Farmers requesting that it provide a submission to the inquiry and nominate witnesses for the hearing on 30 March 2021.

Resolved, on the motion of Mr Searle: That the Chair, on behalf of the committee, write again to the Coles Group, Woolworths Group and Aldi seeking a submission to the inquiry, asking them to nominate witnesses for the hearing on 30 March 2021, and reminding them of the committee's power to summons witnesses to attend and give evidence.

**6. Public submission**

Resolved, on the motion of Mr Donnelly: That the committee authorise the publication of submission no. 41.

**7. Confidential submission**

Resolved, on the motion of Mr Fang: That the committee defer consideration of keeping submission no. 38 confidential until its next meeting.

**8. Attachments to submission**

Resolved, on the motion of Mrs Maclaren-Jones: That the committee authorise the publication of attachments to submission no. 39.

**9. Answers to questions on notice and supplementary questions**

Resolved, on the motion of Mr Pearson: That the committee authorise the publication of answers to questions on notice received from the Australian Road Transport Industrial Organisation and SIRA.

Resolved, on the motion of Mr Searle: That the committee defer consideration of Ola Australia's request to keep its answers to questions on notice and attachments confidential.

**10. Schedule of first report**

Resolved, on the motion of Mr Mallard: That the committee table its first report in August 2021.

**11. Briefing with Ms Natalie James, Chairperson of the Victorian inquiry**

Ms Natalie James, Chairperson of the Inquiry into the Victorian On-Demand Workforce, provided a private briefing to the committee on her report via Webex.

**12. Adjournment**

The committee adjourned at 4.31 pm, until Tuesday 30 March 2021 (public hearing).

Helen Hong  
Committee Clerk

**Minutes no. 7**

Tuesday 30 March 2021

Select Committee on the Impact of Technological and Other Change on the Future of Work and Workers in New South Wales

Jubilee Room, Parliament House, Sydney at 9.06 am

**1. Members present**Mr Mookhey, *Chair*

Mr Fang

Mrs Houssos (from 9.06 am to 9.08 am, 11.35 am to 2.30 pm, 3.30 pm to 3.50 pm, from 4.03 pm to 4.20 pm)

Mr Mallard (via Webex) (until 12.30 pm)

Mr Pearson (until 11.15 am, from 11.42 am to 12.21 pm, left at 3.06 pm)

Mr Searle

Mr Shoebridge (from 9.23 am to 10.30 am, 11.52 am to 12.30 pm, 1.58 to 2.58 pm, from 3.30 pm)

**2. Apologies**Mr Banasiak, *Deputy Chair*

Mrs Maclaren-Jones

Mr Donnelly (participating)

**3. Deputy Chair**

Resolved, on the motion of Mr Fang: That Mr Searle be elected Deputy Chair for the duration of the meeting only.

**4. Public hearing**

Witnesses, the public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were admitted, sworn and examined:

- Mr Ed McManus, Chief Executive Officer, Deliveroo
- Ms Julia Duck, Head of Operations, Strategy and Performance, Deliveroo.

The evidence concluded and the witnesses withdrew.

The following witness was admitted, sworn and examined:

- Mr Tim Fung, Co-Founder and Chief Executive Officer, Airtasker.

The evidence concluded and the witness withdrew.

The following witness was admitted, sworn and examined:

- Mr Damien Scheidel, Managing Director, National Supply Chain, ALDI Australia.

The evidence concluded and the witness withdrew.

The following witnesses were admitted, sworn and examined:

- Ms Jamila Gherjestani, National WHS Director, Australian Workers' Union
- Mr Alistair Sage, Senior Legal Officer, Australian Workers' Union
- Mr Toby Warnes, Director of Organising, Australian Rail Train and Bus Industry Union, NSW Branch
- Mr Alex Claassens, Branch Secretary, Australian Rail Train and Bus Industry Union, NSW Branch.

The evidence concluded and the witnesses withdrew.

The following witnesses were admitted, sworn and examined:

- Mr Peter Achterstraat, NSW Productivity Commissioner
- Mr Neville Stevens, Chair, NSW Innovation and Productivity Council.

The evidence concluded and the witnesses withdrew.

**5. Previous minutes**

Resolved, on the motion of Mr Searle: That draft minutes no. 6 be confirmed.

**6. Correspondence**

The committee noted the following items of correspondence:

***Received:***

- 8 March 2021 – Email from Ms Rachel Elliott, Head of Government Relations and Industry Affairs – Retail, Woolworths Group, to the secretariat, declining invitation to nominate witnesses for the March hearing
- 8 March 2021 – Email from Mr Mitch Worsley, Industrial Officer, Shop, Distributive and Allied Employees' Association – NSW Branch, to the secretariat, declining invitation to nominate witnesses for the March hearing due to unavailability
- 11 March 2021 – Email from Ms Vittoria Bon, Government and Industry Relations Manager, Corporate Affairs, Coles, declining the committee's invitation to make a submission and nominate witnesses for the March hearing
- 22 March 2021 – Email from Ms Helen Macukewicz, Professional Officer – Professional Services, NSW Nurses and Midwives Association, to the secretariat, providing reasons as to why its submission should be kept confidential.

***Sent::***

- 4 March 2021 – Letter from the Chair, to Ms Vittoria Bon, Government and Industry Relations Manager, Corporate Affairs, Coles, requesting that Coles reconsider the committee's invitation to make a submission and nominate witnesses for the March hearing and reminding them of the committee's power to summon witnesses to attend and give evidence
- 4 March 2021 – Letter from the Chair, to Mr Christian Bennett, Group Head of Reputation, Government Relations and Industry Affairs, Woolworths Group, requesting that Woolworths reconsider the committee's invitation to nominate witnesses for the March hearing and reminding them of the committee's power to summon witnesses to attend and give evidence
- 4 March 2021 – Letter from the Chair, to Mr Adrian Christie, Director, Customer Relations, Aldi, requesting that Aldi reconsider the committee's invitation to make a submission and nominate witnesses for the March hearing and reminding them of the committee's power to summon witnesses to attend and give evidence
- 4 March 2021 – Letter from the Chair, to Ms Annabel Johnson, Head of Advocacy and Policy, NSW Farmers' Association, requesting that NSW Farmers reconsider the committee's invitation to make a submission and of its intention to invite NSW Farmers to nominate witnesses for the April hearing .

**7. Public submissions**

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 42-48.

**8. Confidential submission**

Resolved, on the motion of Mr Shoebridge: That the committee:

- keep submission no. 38 confidential as per the request of the author, as it contains sensitive information
- invite the author to provide a more general submission that could be published
- on receipt of the additional submission, potentially reconsider publication of submission no. 38
- keep the correspondence from Ms Helen Macukewicz, Professional Officer – Professional Services, NSW Nurses and Midwives Association, regarding the publication of its submission, dated 22 March 2021, confidential, as per the recommendation of the secretariat.

**9. Answers to questions on notice**

The committee noted that the following answers to questions on notice were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from Ms Clemency Morony, Head of Ministerial and Parliamentary Support, Strategy and Governance, icare, received 17 March 2021.

Resolved, on the motion of Mr Shoebridge: That the committee keep Ola Australia's answers to questions on notice and attachments confidential, as per the request of the author, as they are commercial-in-confidence.

**10. Coles and Woolworths witnesses**

Resolved, on the motion of Mr Shoebridge: That:

- the Chair, on behalf of the committee, request the Clerk of the Parliaments to seek legal advice as soon as possible from Professor Gabrielle Appleby, University of New South Wales Faculty of Law and Justice, on whether the committee's power to issue a summons under the Parliamentary Evidence Act 1901 extends outside of New South Wales
- following receipt of the legal advice, the committee meet to consider next steps regarding Woolworths and Coles, with a view to them giving evidence on 19 April 2021.

**11. Site visit**

Resolved, on the motion of Mr Shoebridge: That the Chair canvass with members the earliest practical date for a site visit and hearing on the Mid North Coast, focusing on the blueberry intensive horticulture industry, potentially hosted by the Coffs Harbour Council or another facility with remote access to facilitate remote attendance by Mr Fang.

**12. Public hearing**

The following witnesses were admitted, sworn and examined:

- Professor David Peetz, Emeritus Professor, Department of Employment Relations and Human Resources, Griffith Business School, Griffith University (*via videoconference*)
- Dr Alex Veen, Lecturer (Academic Fellow), University of Sydney Business School
- Dr Tom Barratt, Lecturer, Centre for Work + Wellbeing, Edith Cowan University (*via videoconference*)
- Professor Daryll Hull, Executive Chair, Transport Education Audit Compliance Health Organisation (TEACHO).

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4.52 pm.

**13. Adjournment**

The committee adjourned at 4.52 pm, until Monday, 19 April 2021 (public hearing).

Helen Hong  
**Committee Clerk**

**Minutes no. 8**

Monday 12 April 2021

Select Committee on the Impact of Technological and Other Change on the Future of Work and Workers in New South Wales

Room 1136, Parliament House, Sydney at 3.34 pm

**1. Members present**

Mr Mookhey, *Chair*

Mr Banasiak, *Deputy Chair*

Mr Donnelly (*participating*)

Mr Fang

Mrs Houssos

Mr Mallard

Mr Searle

Mr Shoebridge

**2. Apologies**

Mrs Maclaren-Jones

Mr Pearson

**3. Previous minutes**

Resolved, on the motion of Mr Mallard: That draft minutes no.7 be confirmed.

**4. Correspondence**

***Received:***

- 29 March 2021 – Email from Mr Ryan Smith, Manager, Public Policy, Amazon Australia, to the secretariat, providing advice on the logistics of a site visit to the Amazon Distribution Centre
- 9 April 2021 – Memorandum to the Clerk of the Parliaments providing legal advice on the power of committees to summon witnesses outside of the state of New South Wales, from Professor Gabrielle Appleby, University of New South Wales Law and Justice.

***Sent:***

- 9 April 2021 – Letter from the Chair to Ms Helen Macukewicz, Professional Officer, Professional Services, NSW Nurses and Midwives' Association, inviting a general submission to the inquiry.

**5. Answers to questions on notice**

The following answers to questions on notice were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Revenue NSW, received 22 March 2021
- Mr Fang Sun, Hungry Panda delivery driver, received 23 March 2021
- Hungry Panda, received 25 March 2021
- Restaurant and Catering Industry Association, received 25 March 2021
- Australian Manufacturing Workers' Union, received 26 March 2021.

**6. Coles and Woolworths witnesses**

The committee noted the legal advice provided by Professor Gabrielle Appleby, University of New South Wales Faculty of Law and Justice, to the Clerk of the Parliaments.

Resolved, on the motion of Mr Searle: That:

- The committee invite Mr Christian Bennett, Group Head of Reputation, Government Relations and Industry Affairs, Woolworths Group, to give evidence at the hearing on Monday 19 April 2021 from 9.45 am to 10.45 am, indicating that if Woolworths does not accept the invitation by 12 noon Wednesday 14 April 2021, the committee will issue a summons to compel Mr Bennett's attendance

- If the witness does not accept the invitation, under the authority of s 4(2) of the Parliamentary Evidence Act 1901, the Chair, on behalf of the committee, issue a summons to Mr Christian Bennett, Group Head of Reputation, Government Relations and Industry Affairs, Woolworths Group to attend and give evidence before the committee on Monday 19 April 2021 from 9.45 am to 10.45 am.
- Subject to further instruction from the Chair, the committee invite a representative of Coles in New South Wales to give evidence at the hearing on Monday 19 April 2021 from 9.45 am to 10.45 am, indicating that if Coles does not accept the invitation by 12 noon Wednesday 14 April, the committee will issue a summons to compel the representative's attendance
- If the representative of Coles does not accept the invitation, under the authority of s 4(2) of the Parliamentary Evidence Act 1901, the Chair, on behalf of the committee, issue a summons to the representative to attend and give evidence before the committee on Monday 19 April 2021 from 9.45 am to 10.45 am.

**7. Site visit to Amazon Distribution Centre**

The committee discussed practical arrangements for its site visit to the Amazon Distribution Centre in Western Sydney on the morning of Monday 17 May 2021.

**8. Site visit to Coffs Harbour**

The committee discussed practical arrangements for its site visit to Coffs Harbour including a blueberry farm visit and public hearing in July 2021.

**9. Adjournment**

The committee adjourned at 3.47 pm, until Monday 19 April 2021 (public hearing)

Merrin Thompson  
**Committee Clerk**

**Minutes no. 9**

Monday 19 April 2021

Select Committee on the Impact of Technological and Other Change on the Future of Work and Workers in New South Wales

Macquarie Room, Parliament House, Sydney at 9.31 am

**1. Members present**

Mr Mookhey, *Chair*

Mr Banasiak, *Deputy Chair* (until 12.57 pm)

Ms Boyd (substituting for Mr Shoebridge) (via Webex) (from 9.45 am)

Mr Donnelly (participating)

Mr Fang

Mrs Houssos (from 9.35 am)

Mr Mallard (via Webex) (from 9.37 am until 1.00 pm)

Mr Searle

**2. Apologies**

Mr Pearson

Mrs Maclaren-Jones

**3. Draft minutes**

Resolved, on the motion of Mr Fang: That draft minutes no. 8 be confirmed.



#### 4. **Correspondence**

The committee noted the following items of correspondence:

##### ***Received:***

- 13 April 2021 – Email from Ms Anju Sharma, Senior Parliamentary Officer, Parliamentary and Government Services, Office of the Secretary, Transport for NSW, to the secretariat, declining committee's invitation to give evidence at hearing on 19 April 2021
- 13 April 2021 – Email from Mr Baker Khundakji, Young Transport Workers Officer, International Transport Workers' Federation, to the secretariat, declining committee's invitation to give evidence at hearing on 19 April 2021
- 14 April 2021 – Email from Ms Catherine Savage, Executive Assistant, National Farmers Federation, to the secretariat, declining committee's invitation to give evidence at hearing on 19 April 2021
- 14 April 2021 – Email from Ms Donna Bennett, Executive Officer, Office of the Secretary, Department of Education, to the secretariat, declining committee's invitation to give evidence at hearing on 19 April 2021
- 15 April 2021 – Email from Ms Lisa Knight, Director, Parliamentary and Government Liaison, Australian Competition and Consumer Commission, to the secretariat, declining committee's invitation to give evidence at hearing on 19 April 2021.

##### ***Sent:***

- 12 April 2021 – Letter from the Chair to Mr Christian Bennett, Group Head of Reputation, Government Relations and Industry Affairs, Woolworths Group, requesting his attendance at the hearing on 19 April 2021.

#### 5. **Deputy Chair**

Resolved, on the motion of Mr Fang: That Mr Searle be elected Deputy Chair from 1.00 pm to the conclusion of the meeting.

#### 6. **Submission**

Resolved, on the motion of Mr Searle: That the committee authorise the publication of submission no. 23a.

#### 7. **Site visit to Amazon Distribution Centre**

The committee discussed practical arrangements for its site visit the Amazon Distribution Centre in Western Sydney on the morning of Monday 17 May 2021.

#### 8. **Coles witnesses**

The committee discussed the attendance of Coles.

#### 9. **Public hearing**

Witnesses, the public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were admitted, sworn and examined:

- Ms Carmel Pelunsky, Director, Talent and Future of Work, Woolworths Group
- Ms Jessica Digby, Workplace Relations Partner, Woolworths Group
- Ms Rachel Elliott, Head of Government Relations – Retail, Woolworths Group
- Mr Tom Windeyer, General Manager, Last Mile, WooliesX
- Mr Craig Adams, General Manager, National Operations, Woolworths Group.

Ms Elliott tendered the following document:

- Woolworths Group, Modern Slavery Statement 2020 – Respecting Human Rights.

The evidence concluded and the witnesses withdrew.

The following witnesses were admitted, sworn and examined:

- Mr Bernie Smith, Branch Secretary, Shop, Distributive and Allied Employees' Association, NSW Branch
- Mr Mitchell Worsley, Industrial Officer, Shop, Distributive and Allied Employees' Association, NSW Branch.

The evidence concluded and the witnesses withdrew.

The following witnesses were admitted, sworn and examined:

- Mr Peter Arkle, Chief Executive Officer, NSW Farmers
- Ms Kathy Rankin, Policy Director – Rural Affairs and Business, Economics and Trade, NSW Farmers
- Ms Gracia Kusuma, Director Workplace Relations, NSW Farmers.

The evidence concluded and the witnesses withdrew.

The following witnesses were admitted, sworn and examined:

- Mr Matthew Denman, General Manager, Uber Eats
- Ms Amanda Gilmore, Head of Driver Operations, Uber.

The Chair tendered the following document:

- SafeWork NSW Improvement Notices.

The evidence concluded and the witnesses withdrew.

The following witnesses were admitted, sworn and examined:

- Professor Rae Cooper, Professor of Gender, Work and Employment Relations, University of Sydney – Australian Women's Working Futures (*via videoconference*)
- Professor Robyn Mayes, Director, Centre for Decent Work & Industry, Queensland University of Technology (*via videoconference*)
- Dr Penelope Williams, Senior Lecturer, School of Management, Queensland University of Technology (*via videoconference*).

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 5.15 pm.

#### **10. Tended documents**

Resolved, on the motion of Mr Fang: That the committee accept the following documents tendered during the public hearing:

- Woolworths Group, Modern Slavery Statement 2020 – Respecting Human Rights, tendered by Ms Rachel Elliott, Head of Government Relations – Retail, Woolworths Group
- SafeWork NSW Improvement Notices, tendered by the Chair.

#### **11. Adjournment**

The committee adjourned at 5.16 pm, until Monday 17 May 20201 (site visit to Amazon Distribution Centre and public hearing).

Helen Hong  
**Committee Clerk**

**Minutes no. 10**

Monday 17 May 2021

Select Committee on the Impact of Technological and Other Change on the Future of Work and Workers in New South Wales

Amazon Distribution Centre, Moorebank at 9.30 am

**1. Members present**

Mr Mookhey, *Chair*

Mr Banasiak, *Deputy Chair* (until 11.35 am)

Mr Donnelly (*participating*)

Mr Fang

Mrs Houssos (from 9.35 am)

Mr Mallard (via Webex) (from 1.33 pm)

Mrs Maclaren-Jones (from 1.31 pm)

Mr Pearson (until 3.21 pm)

Mr Searle

Mr Shoebridge

**2. Site visit to Amazon Distribution Centre**

The committee visited the Amazon Distribution Centre and received a briefing and tour, hosted by:

- Mr Craig Fuller, Director of Operations for Australia
- Mr Sid Yadwad, Site Lead, Moorebank Fulfilment Centre
- Mr Ryan Smith, Manager, Public Policy.

**3. Deputy Chair**

Resolved, on the motion of Mrs Houssos: That Mr Searle be elected Deputy Chair from 1.30 pm to the conclusion of the meeting.

**4. Public hearing**

Witnesses, the public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were admitted, sworn and examined:

- Mr Morten Belling, Managing Director, Menulog
- Mr Steven Teoh, Director of Delivery, Menulog.

Resolved, on the motion of Mrs Houssos: that the following answers to questions on notice and supplementary questions be published:

- NSW Productivity Commission and NSW Innovation and Productivity Council, received 22 April 2021
- Professor Daryll Hull, Executive Chair, Transport Education Audit Compliance Health Organisation, received 10 April 2021
- Deliveroo, received 29 April 2021
- ALDI Australia, received 30 April 2021
- Australian Workers' Union, received 30 April 2021
- Professor David Peetz, Emeritus Professor, Department of Employment Relations and Human Resources, Griffith Business School, Griffith University, received 30 April 2021
- Airtasker, received 12 May 2021.

The evidence concluded and the witnesses withdrew.

The following witness was admitted, sworn and examined:

- Ms Vittoria Bon, Government and Industry Relations Manager, Corporate Affairs, Coles (*via teleconference*).

The evidence concluded and the witness withdrew.

The following witnesses were admitted, sworn and examined:

- Ms Mel Gatfield, Director of New Organising, NSW Secretary, United Workers Union
- Ms Lauren Kelly, Media and Research, Office of the National Secretary, United Workers Union (*via videoconference*).

The evidence concluded and the witnesses withdrew.

The following witness was admitted, sworn and examined:

- Mr Michael Buckland, Chief Executive Officer, McKell Institute.

Mr Buckland tendered the following documents:

- Report – McKell Institute, *Blue Harvest: Wage theft & other labour infringements in the NSW Mid-North Coast's 2019/20 berry harvest* (December 2020)
- Report – McKell Institute, *Insecure Work & Portable Entitlements: A Solution for Australia* (February 2021).

The evidence concluded and the witness withdrew.

The public hearing concluded at 5.03 pm.

#### **5. Tendered documents**

Resolved, on the motion of Mrs Houssos: That the committee accept the following documents tendered during the public hearing:

- Report – McKell Institute, *Blue Harvest: Wage theft & other labour infringements in the NSW Mid-North Coast's 2019/20 berry harvest* (December 2020), tendered by Mr Michael Buckland, Chief Executive Officer, McKell Institute
- Report – McKell Institute, *Insecure Work & Portable Entitlements: A Solution for Australia* (February 2021), tendered by Mr Michael Buckland, Chief Executive Officer, McKell Institute.

#### **6. Draft minutes**

Resolved, on the motion of Mr Donnelly: That draft minutes no. 9 be confirmed.

#### **7. Correspondence**

The committee noted the following items of correspondence:

##### ***Received:***

- 22 April 2021 – Letter from Mr Neville Stevens AO, Chair, Innovation and Productivity Council, to the Chair, requesting to clarify and amend his evidence at the hearing on 30 March 2021
- 12 May 2021 – Email from Mr Ryan Smith, Manager of Public Policy, Amazon Australia, to the secretariat, declining committee's invitation to give evidence at hearing on 17 May 2021
- 12 May 2021 – Email from Ms Donna Austin, Research Officer, Health Services Union NSW ACT QLD, to the secretariat, declining committee's invitation to give evidence at hearing on 17 May 2021.

#### **8. Clarification of evidence**

Resolved, on the motion of Mr Shoebridge: That the committee authorise:

- the publication of correspondence from Mr Neville Stevens AO, Chair, NSW Innovation and Productivity Council, clarifying his evidence at the hearing on 30 March 2021, and
- the addition of a footnote to Mr Stevens' evidence with a hyperlink to the clarification.

#### **9. Confidential submission**

Resolved, on the motion of Mr Fang: That the committee keep submission no. 38 confidential, as per the request of the author.

**10. Public submission**

The committee noted that submission no. 49 was published by the committee clerk under the authorisation of the resolution appointing the committee.

**11. Additional hearing in June**

Resolved, on the motion of Mr Shoebridge: That the committee:

- hold an additional half day hearing in June,
- invite Doordash, Easi, Mable and Amazon Australia to give evidence, and
- pending the decision of the Independent Legal Arbiter, Hon Keith Mason AC, regarding a claim of privilege under standing order 52, make a decision on whether to re-invite Revenue NSW.

**12. Adjournment**

The committee adjourned at 5.13 pm, *sine die*.

Helen Hong  
**Committee Clerk**

**Minutes no. 11**

Friday 10 September 2021

Select Committee on the Impact of Technological and Other Change on the Future of Work and Workers in New South Wales

via Webex at 9.35 am

**1. Members present**

Mr Mookhey, *Chair*

Mr Banasiak, *Deputy Chair*

Mrs Houssos

Mrs Maclaren-Jones

Mr Mallard (until 9.55 am, from 11.44 am)

Mr Pearson

Mr Searle

Mr Shoebridge (from 9.42 am until 10.00 am, from 10.43 am until 11.7 am, and from 12.09 pm)

**2. Apologies**

Mr Donnelly (participating)

Mr Fang

**3. Draft minutes**

Resolved, on the motion of Mr Searle: That draft minutes no. 10 be confirmed.

**4. Correspondence**

The committee noted the following items of correspondence:

***Received:***

- 23 June 2021 – Email from Mr Ryan Smith, Manager, Public Policy, Amazon Australia, to the secretariat, declining the committee's invitation to attend the 26 July 2021 hearing
- 23 June 2021 – Email from Mr Mitch Cooper, Director, Public Policy - Australia and New Zealand, Uber, to the secretariat, clarifying one of its answers to questions on notice
- 13 July 2021 – Email from Ms Harriet Skinner, Executive Assistant, Office of the Director General, NSW Department of Primary Industries, to the secretariat, declining the committee's invitation to attend the 27 July 2021 hearing

- 13 July 2021 – Email from Office of Gurmeh Singh MP, Member for Coffs Harbour, to the secretariat, declining the committee's invitation to attend the 27 July 2021 hearing
- 19 July 2021 – Email from Ms Lisa Garden, Group Leader Governance Services, Coffs Harbour City Council, to the secretariat, declining the committee's invitation to attend the 27 July 2021 hearing
- 6 September 2021 – Letter from Mr Anthony Wing, Point to Point Transport Commissioner, to the Chair, responding to the request for the Uber safety audit report.

***Sent:***

- 20 May 2021 – Letter from the Chair, to Mr Ryan Smith, Manager of Public Policy, Amazon Australia, thanking him for facilitating the committee's visit to the Amazon warehouse and following up on questions asked
- 27 August 2021 – Letter from the Chair, to Mr Anthony Wing, Point to Point Transport Commissioner, requesting a copy of the Uber safety audit report and invitation to 18 October hearing.

**5. Public submission**

The committee noted that submission nos. 50 and 52 were published by the committee clerk under the authorisation of the resolution.

**6. Confidential submission**

Resolved, on the motion of Mr Searle: That the committee keep submission no. 51 confidential, as per the request of the author, as it contains unpublished research.

**7. Answers to questions on notice and supplementary questions**

The noted that the following answers to questions on notice were published by the committee clerk under the authorisation of the resolution appointing the committee:

- NSW Farmers, received 12 May 2021
- Professor Rae Cooper, Professor of Gender, Work and Employment Relations, University of Sydney – Australian Women's Working Futures, received 12 May 2021
- Uber, received 13 May 2021
- Queensland University of Technology, received 13 May 2021
- Menulog, received 16 June 2021
- United Workers Union, received 18 June 2021
- Coles, received 25 June 2021.

Resolved, on the motion of Mr Banasiak: That the committee keep the answers to questions on notice and supplementary questions from Woolworths, received 17 May 2021, confidential, as per the request of the author, as they contain sensitive information.

**8. Briefing on virtual hearing proceedings**

The Chair briefed members on virtual hearing arrangements. Key points included:

- turning off the microphone if not speaking to remove background noise
- turning off the video or leaving and re-joining if connection issues
- try to avoid talking at the same time
- be clear on which witness your questions are directed to, or which witness should respond first
- a short break will follow each session, allowing the next witnesses to join the meeting and test their connection
- members should stay connected during these breaks, but noting that witnesses will be able to hear any discussions that are taking place between members during this time
- there is a time lag when people enter and leave the lobby and when coming on and off mute.

**9. Livestream and recording of hearing**

Resolved, on the motion of Mr Mallard: That the committee agree to record today's hearing, as well as any future virtual hearings for the inquiry, and that the recordings be placed on YouTube as soon as practicable after the hearing.

**10. Photo of committee for social media**

Resolved, on the motion of Mrs Maclaren-Jones: That the secretariat take a screenshot of the committee during its deliberative for the purposes of publishing on social media.

**11. Virtual committee guidelines**

The committee noted the DPS Virtual Committee Hearing Guidelines to help ensure that Hansard can transcribe the hearing, witnesses and/or members should avoid speaking over each other.

**12. Public hearing**

Witnesses, the public and media were admitted via video link.

The Chair made an opening statement regarding the broadcasting of proceedings, virtual hearing etiquette and other matters.

The following witnesses were admitted, sworn and examined:

- Ms Rebecca Burrows, General Manager, Doordash
- Mr Puji Fernando, Senior Manager, Strategy and Operations, Doordash.

The evidence concluded and the witnesses withdrew.

The following witnesses were admitted, sworn and examined:

- Mr Young Hou, Driver Operations Manager, EASI
- Mr Will Wang, Legal Manager, EASI
- Ms Kitty Lu, Compliance and Public Relations Manager, EASI.

The evidence concluded and the witnesses withdrew.

The following witness was admitted, sworn and examined:

- Mr Peter Scutt, Co-Founder and Chief Executive Officer, Mable.

The evidence concluded and the witness withdrew.

The following witnesses were admitted, sworn and examined:

- Ms Natalie Lang, Branch Secretary, Australian Services Union (NSW & ACT Branch)
- Mr Angus McFarland, Assistant Secretary, Australian Services Union (NSW & ACT Branch)
- Mr Gerard Hayes, Secretary, Health Services Union (NSW, ACT & QLD)
- Ms Lauren Hutchins, Division Secretary, Aged Care and Disabilities, Health Services Union (NSW, ACT & QLD).

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 1.04 pm.

**13. Witnesses for 18 October hearing**

The committee noted that there were no objections to the Chair's proposed invitations to the following witnesses for the hearing on 18 October 2021:

- Revenue NSW – Chief Commissioner of State Revenue
- Point to Point Transport Commission – Commissioner Anthony Wing.

Resolved, on the motion of Mrs Houssos: That the Chair, on behalf of the committee, write to Amazon Australia inviting it to appear at the upcoming hearing on 18 October 2021, and for members to circulate additional witness suggestions to the secretariat.

**14. Committee activities in COVID-19 outbreak**

The committee noted that it agreed via email that, in the circumstances of the COVID-19 outbreak, it would not proceed with the following planned activities:

- 26 July 2021 – hearing at Parliament House
- 27 July 2021 – site visit and hearing in Coffs Harbour
- 4 August 2021 – hearing at Parliament House.

The committee agreed to defer consideration of rescheduling Coffs Harbour site visit and hearing to a later date when Public Health Orders have been lifted.

The Chair noted that the inquiry would canvass hearing dates for the issue of workplace surveillance when face-to-face hearings return, pending advice from the Presiding Officers and Clerks, potentially in December 2021 or February 2022.

**15. Adjournment**

The committee adjourned at 1.11 pm, until Monday 18 October 2021 (virtual hearing).

Helen Hong

**Committee Clerk**

**Minutes no. 12**

Monday 18 October 2021

Select Committee on the Impact of Technological and Other Change on the Future of Work and Workers in New South Wales

via Webex at 9.32 am

**1. Members present**

Mr Mookhey, *Chair*

Mrs Houssos (until 9.38 am)

Mr Fang

Mrs Maclaren-Jones (until 9.38 am)

Mr Pearson

Mr Mallard

Mr Searle

Mr Shoebridge (until 10.16 am)

**2. Apologies**

Mr Banasiak, *Deputy Chair*

Mr Donnelly (participating)

**3. Previous minutes**

Resolved, on the motion of Mr Searle: That draft minutes no. 11 be confirmed

**4. Answers to questions on notice**

The committee noted that the following answers to question on notice were published by the committee clerk under the authorisation of the resolution appointing the committee:

- EASI, received 6 October 2021
- Doordash, received 7 October 2021
- Mable, received 7 October 2021.

Resolved, on the motion of Mr Searle: That the committee authorise the publication of the attachments contained in answers to question on notice from EASI.



**5. Correspondence**

The committee noted the following items of correspondence:

**Received:**

- 6 October 2021 - Letter from Kitty Lu, Compliance Manager and Public Relations Manager, EASI Group, to the secretariat, seeking corrections to the transcript
- 14 October 2021 - Email from Ms Kitty Lu, Compliance Manager and Public Relations Manager, EASI Group, to the secretariat, providing clarification to transcript of evidence from 10 September hearing.

**6. Clarification of evidence – EASI**

Resolved, on the motion of Mr Searle: That the committee authorise the publication of Ms Lu's clarification of evidence and the insertion of a footnote in the hearing transcript for 10 September 2021, linked to Ms Lu's correspondence

**7. Future activities for the inquiry**

The committee agreed to the Chair's proposal that the committee conclude its gig economy hearings at this point and that the secretariat draft the first report for a report deliberative to be scheduled in February 2022, with hearings to commence in March for workplace surveillance and automation.

**8. Submission**

Resolved, on the motion of Mr Searle: That the committee authorise the publication of submission no. 53.

**9. Photo of committee for social media**

Resolved, on the motion of Mr Shoebridge: That the secretariat take a screenshot of the committee for this hearing and any future hearings for the inquiry, with its knowledge, for the purposes of publishing on social media.

**10. Public hearing**

Witnesses, the public and media were admitted via video link.

The Chair made an opening statement regarding the broadcasting of proceedings, virtual hearing etiquette and other matters.

The following witness was admitted, sworn and examined:

- Mr Anthony Wing, Point to Point Transport Commissioner.

The evidence concluded and the witness withdrew.

Witnesses were admitted via videolink.

The Chair reminded the following witnesses that they did not need to be sworn, as they had been sworn at an earlier hearing for the same inquiry:

- Mr Scott Johnston, Deputy Secretary and Chief Commissioner of State Revenue, Revenue NSW
- Mr Cullen Smythe, Commissioner of State Revenue, Revenue NSW.

The witnesses were examined by the committee.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 11.45 am.

**11. Adjournment**

The committee adjourned at 11.46 am, *sine die*.

Helen Hong and Donna Glover  
Committee Clerks

**Minutes no. 13**

Monday 28 March 2022

Select Committee on the Impact of Technological and Other Change on the Future of Work and Workers in New South Wales

Room 1043, Parliament House, 12.21 pm

**1. Members present**Mr Mookhey, *Chair*

Mr Amato

Mr Donnelly (substituting for Mrs Houssos)

Mr Mallard

Mr Searle

Mr Shoebridge

**2. Apologies**

Mr Banasiak

Mr Barrett

Mr Pearson

Mrs Houssos

**3. Previous minutes**

Resolved on the motion of Mr Mallard: That draft minutes no. 12 be confirmed.

**4. Correspondence**

The committee noted the following items of correspondence:

***Received***

- 25 March 2022 – Email from Cara Punch, Office of the Hon Mark Buttigieg MLC, Opposition Whip in the Legislative Council, advising that Mr Donnelly will be substituting for Mrs Houssos for the report deliberative.

**5. Answers to questions on notice**

The following answers to questions on notice were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Point to Point Transport Commissioner, received 18 December 2021
- Revenue NSW, received 18 December 2021.

Resolved on the motion of Mr Shoebridge: That the committee keep the following information confidential, as per the recommendation of the secretariat: names and/or identifying and sensitive information in EASI's attachments to its answers to questions on notice.

Resolved on the motion of Mr Shoebridge: That the committee publish answers to questions on notice from SafeWork NSW, received 25 February 2022.

**6. Publication of 18 October 2021 transcript**

The committee noted that it agreed via email to publish the un-subedited transcript of the 18 October 2021 hearing.

**7. Future inquiry activities**

Resolved on the motion of Mr Searle: That the secretariat canvass members' availability for:

- two hearings in the second half of May or June
- the final report deliberative in September, after budget estimates.

**8. Public submissions**

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 20 and 41.

**9. Recording of deliberative meeting**

Resolved on the motion of Mr Donnelly: That the meeting be recorded through WebEx for the purposes of the secretariat cross-checking amendments following the meeting only, with the recording deleted after this use.

**10. Circulation of Chair's draft report**

The committee noted that it agreed via email that the Chair's draft report be circulated to the committee less than seven calendar days prior to the date scheduled for the deliberative.

**11. Consideration of Chair's draft report**

The Chair submitted his draft report entitled 'Impact of technological and other change on the future of work and workers in New South Wales – First report: The gig economy', which, having been previously circulated, was taken as being read.

Mr Mallard moved: That Findings 1 – 4 be omitted:

**'Finding 1**

That New South Wales is falling behind other states and comparable nations in developing laws that establish decent work in the gig economy.

**Finding 2**

That the failure to provide gig workers with a minimum wage, paid leave and other basic workplace entitlements is increasing inequality in New South Wales.

**Finding 3**

That gig workers currently lack the power to interact and negotiate with on-demand platforms as equals in New South Wales.

**Finding 4**

That the failure to provide gig workers with access to a low-cost independent tribunal empowered to hear and decide disputes is leading to injustice in New South Wales.'

and the following new findings be inserted instead:

**'Finding 1**

That the gig economy is an innovative workforce development driven by the ongoing digital revolution affecting all aspects of our lives.

**Finding 2**

That many thousands of gig workers appreciate the flexibility and opportunities that the gig economy provides.

**Finding 3**

The gig economy is a flexible, evolving work environment that requires minimalist government or external interventions.

**Finding 4**

That all workers should benefit from minimum standards of remuneration and work place safety protections.'

Question put.

The committee divided.

Ayes: Mr Amato, Mr Mallard.

Noes: Mr Mookhey, Mr Donnelly, Mr Searle, Mr Shoebridge.

Question resolved in the negative.

Mr Mallard moved: That Recommendations 2, 3, 5, 9, 10, 11, 14, 16 and 17 be omitted:

**'Recommendation 2**

That the NSW Government establish a tribunal with the power to set minimum pay and conditions for gig workers that provide labour to on-demand platforms regardless of work status, to the extent permitted by the state's constitutional authority.

**Recommendation 3**

That the NSW Government consider extending Chapter 6 of the *Industrial Relations Act 1996* to include at least rideshare and food delivery workers.

**Recommendation 5**

That the NSW Government give the tribunal envisaged in recommendation 2 the power to advise on, oversee and make binding rulings on disputes between gig workers and on-demand platforms, to the extent permitted by the state's constitutional authority.

**Recommendation 9**

That the NSW Government legislate to establish a system of collective bargaining for workers providing labour to on-demand platforms, to the extent permitted by the state's constitutional authority.

**Recommendation 10**

That the NSW Government amend Chapter 6 of the *Industrial Relations Act 1996* to establish a collective bargaining system that includes rideshare, food delivery and parcel delivery workers.

**Recommendation 11**

That the NSW Government give the tribunal envisaged in recommendation 2 the power to recognise an agreement reached by an on-demand platform and its workers (or their representatives) that improves the minimum conditions a worker is otherwise entitled to.

**Recommendation 14**

That the NSW Governments legislate to establish a requirement for all on-demand platforms to register with SafeWork NSW before they begin trading.

**Recommendation 16**

That the NSW Government introduce a scheme that delivers standardised workplace health and safety training to workers providing labour to on-demand platforms in high-risk industries, which can be recognised by all platforms that a worker chooses to work for.

**Recommendation 17**

That the NSW Government partner with on-demand platforms, employers and unions to develop an enforcement regime which provides for the inspection, auditing and reporting of an on-demand platform's compliance with workplace health and safety laws by organisations independent of that platform.'

Question put.

The committee divided.

Ayes: Mr Amato, Mr Mallard.

Noes: Mr Mookhey, Mr Donnelly, Mr Searle, Mr Shoebridge.

Question resolved in the negative.

Resolved on the motion of Mr Shoebridge: That:

- a) paragraph 3.77 be amended by omitting: 'However, our preference is that a separate expanded tribunal be established as a more inclusive, far-reaching approach', and inserting instead:

'Whether it is a new body or an extension of the existing tribunal with the far reaching powers necessary to regulate conditions of engagement and employment, is an open question. The core task is to urgently create the extended jurisdiction to protect gig workers.'

- b) Recommendation 2 be amended by inserting 'or extend the jurisdiction of the existing tribunal' after 'establish a tribunal'.

Resolved on the motion of Mr Searle: That:

- a) paragraph 3.78 be amended by omitting all words after 'effective enforcement regime', and inserting instead:

'In this regard, the committee notes legislation passed by the Legislative Council in 2019 to make changes to Chapter 6 to delete s309(4)(d) and permit those delivering milk, cream and bread to be covered by a contract determination. As such, the committee recommends that the NSW Government puts forward legislation to the Parliament to extend Chapter 6 of the Industrial Relations Act 1996, to include at least rideshare and food delivery workers as well as those engaged to deliver bread, milk and cream.' [FOOTNOTE: See Industrial Relations (Contract of Carriage) Bill 2019, debated in the Legislative Council on 30 May and 14 November 2019]

- b) Recommendation 3 be amended by omitting: 'consider extending Chapter 6 of the Industrial Relations Act 1996 to include at least rideshare and food delivery workers', and inserting instead:

'introduce legislation to extend Chapter 6 of the Industrial Relations Act 1996 to include at least rideshare and food delivery workers as well as those engaged to deliver bread, milk and cream.'

Resolved on the motion of Mr Shoebridge: That paragraph 3.78 be amended by inserting at the end: 'This would not provide all the essential protections that these workers deserve, nor will it address the needs of all vulnerable workers in the gig economy, but it would be a significant advance for rideshare and food delivery workers and can be achieved rapidly within a well-established legal framework.'

Resolved on the motion of Mr Donnelly: That the following new paragraph be inserted after paragraph 4.52:

'The mandating of improved transparency should include granting the right to registered organisations to inspect the code/software algorithms/platforms used to allocate work, establish rosters, distribute additional shifts and ensure all work is made available on a non-discriminatory basis, subject to appropriate protections.'

Resolved on the motion of Mr Donnelly: That the following new paragraph and recommendation be inserted before paragraph 7.119

'The *Work Health and Safety Act 2011* is the principal piece of state legislation that deals with work health and safety in New South Wales. To guarantee that gig workers are protected by the Act, the committee recommends that the NSW Government review health and safety legislation to ensure workers in the gig economy are protected by health and safety laws including reviewing the definitions of 'person conducting a business or undertaking' and 'worker' in the Work Health and Safety Act 2011.'

### **Recommendation X**

That the NSW Government review health and safety legislation to ensure workers in the gig economy are protected by health and safety laws, including reviewing the definitions of 'person conducting a business or undertaking' and 'worker' in the Work Health and Safety Act 2011.'

Resolved on the motion of Mr Shoebridge: That paragraph 7.125 be amended by inserting 'without a mechanism that sees premiums rise and fall based on workplace safety history and injury records' after 'pooled revenue model'.

Resolved on the motion of Mr Shoebridge: That:

- a) paragraph 7.125 be amended by omitting 'introduce a workers compensation scheme which provides on-demand platform workers with income and medical benefits at an equivalent level to the benefits currently provided to employees injured in New South Wales workplaces' and inserting instead 'provide full workers compensation benefits to on-demand platform workers that are equivalent to the level of benefits currently provided to employees injured in New South Wales workplaces'.
- b) Recommendation 19 be amended by omitting: 'introduce a workers compensation scheme which provides on-demand platform workers with income and medical benefits at an equivalent level to the benefits currently provided to employees injured in New South Wales workplaces', and inserting instead:  
'provide full workers compensation benefits to on-demand platform workers that are equivalent to the level of benefits currently provided to employees injured in New South Wales workplaces.'

Mr Searle moved: That:

- a) the draft report as amended be the report of the committee and that the committee present the report to the House;
- b) the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- c) the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- d) dissenting statements be provided to the secretariat by 5.00 pm, Tuesday 29 March 2022;
- e) the Chair will table the report on a date to be determined by the Chair in consultation with the secretariat;
- f) the Chair to advise the secretariat and members if they intend to hold a press conference, and if so, the date and time.

Question put.

The committee divided.

Ayes: Mr Mookhey, Mr Donnelly, Mr Searle, Mr Shoebridge.

Noes: Mr Amato, Mr Mallard.

Question resolved in the affirmative.

## 12. Adjournment

The committee adjourned at 12.50 pm, *sine die*.

Lauren Evans  
**Committee Clerk**

**Minutes no. 14**

Wednesday 29 June 2022

Select Committee on the Impact of Technological and Other Change on the Future of Work and Workers in New South Wales

Room 814/815, Parliament House, 10.01 am

**1. Members present**

Mr Amato (until 10.49 am, and then from 1.15 pm)

Mr Barrett (*via webex*)

Ms Boyd

Mr D'Adam (substituting for Mr Mookhey from 10.00 am to 12.15 pm)

Mr Donnelly (substituting for Mrs Houssos from 10.00 am to 12.15 pm)

Mrs Houssos (from 1.15 pm)

Mr Mallard (until 12.15 pm, and then from 2.00 pm)

Mr Moselmane (substituting for Mr Mookhey from 1.15 pm)

Mr Searle

**2. Apologies**

Mr Banasiak

Mr Mookhey

Mr Pearson

**3. Election of temporary Chair and Deputy Chair**

The Clerk noted the absence of both the Chair and Deputy Chair for the meeting.

The Clerk called for nominations for a member to act as Chair for the purpose of the meeting.

Mr Donnelly moved: That Mr Searle be elected as Acting Chair of the committee.

There being no further nomination, the Clerk declared Mr Searle elected Acting Chair for the purposes of this meeting only.

The Chair called for nominations for a member to act as Deputy Chair for the purposes of this meeting only.

Ms Boyd moved: That Mr Mallard be elected as Acting Deputy Chair of the committee.

There being no further nomination, the Acting Chair declared Mr Mallard elected Acting Deputy Chair for the purposes of this meeting only.

**4. Previous minutes**

Resolved on the motion of Ms Boyd: That draft minutes no. 13 be confirmed.

**5. Correspondence**

The committee noted the following items of correspondence:

***Received:***

- 14 June 2022 – Email from Dr Andreas Pekarek, Senior Lecture in Management, Department of Management and Marketing, University of Melbourne, to the secretariat, declining the committee's invitation to appear at the hearing on 29 June 2022
- 14 June 2022 – Email from Mr Michael Tidball, Secretary, Department of Communities and Justice, to the secretariat, declining the committee's invitation to appear at the hearing on 29 June 2022 and offering to answer questions on notice from the committee
- 17 June 2022 – Email from Dr Kai Reimer, Senior Lecture in Management, Department of Management and Marketing, University of Melbourne, to the secretariat, declining the committee's invitation to appear at the hearing on 29 June 2022

- 20 June 2022 – Email from Ms Lauren Kelly, Media and Research, United Workers Union, to the secretariat, declining the committee's invitation to appear at the hearing on 29 June 2022.

### 5.1 Declarations of interest

The following members and secretariat declared prior association with witnesses:

- Mr Searle – Mr Peter Lewis, Centre for Responsible Technology, Australia Institute; Mr Bernie Smith, Branch Secretary, Shop, Distributive and Allied Employees' Association (NSW Branch); and Mr Sam Moreton, General Manager, Policy & Analysis, Business NSW
- Mr D'Adam – Mr Peter Lewis, Centre for Responsible Technology, Australia Institute
- Mr Donnelly – Mr Bernie Smith, Branch Secretary, Shop, Distributive and Allied Employees' Association (NSW Branch); and Mr Sam Moreton, General Manager, Policy & Analysis, Business NSW
- Ms Thompson, Director Committees – Professor Ariadne Vromen, Professor of Public Administration, Crawford School of Public Policy, Australian National University.

### 5.2 Public hearing

The committee proceeded to take evidence in public.

Witnesses were admitted to the hearing room and via video link.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Mr Peter Lewis, Director, Centre for Responsible Technology, Australia Institute (*via videoconference*)
- Professor Mark Andrejevic, Professor, Communication & Media Studies, Monash Data Futures Institute (*via videoconference*)
- Professor Toby Walsh, Laureate Fellow and Scientia Professor of Artificial Intelligence, University of New South Wales (*via videoconference*).

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Professor Ariadne Vromen, Professor of Public Administration, Crawford School of Public Policy, Australian National University (*via videoconference*)
- Dr Josh Healy, Senior Lecturer in Employment Relations, The University of Newcastle (*via videoconference*)
- Professor Leah Ruppanner, Sociology and Founding Director of The Future of Work Lab at the University of Melbourne (*via videoconference*)
- Dr Brendan Churchill, Australian Research Council Research Fellow and Lecturer in Sociology, School of Social and Political Sciences, Faculty of Arts, University of Melbourne (*via videoconference*).

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Bernie Smith, Branch Secretary, Shop, Distributive and Allied Employees' Association (NSW Branch)

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Nicola Street, National Manager – Workplace Relations Policy, Australian Industry Group (*via videoconference*)
- Mr Brent Ferguson, Director – Major Cases, Workplace Relations Advocacy & Policy, Australian Industry Group (*via videoconference*)
- Mr Sam Moreton, General Manager, Policy & Analysis, Business NSW
- Mr Luis Izzo, Managing Director – Sydney Workplace, Australian Business Lawyers & Advisors



Ms Nicole Street tendered the following document:

- A document titled 'Ai Group Submission – Impact of technological and other change on the future of work and workers in New South Wales', 27 June 2022.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 2.56 pm.

### **5.3 Tendered documents**

Resolved, on the motion of Mrs Houssos: That the committee accept and publish the following documents tendered during the public hearing:

- 'Ai Group Submission – Impact of technological and other change on the future of work and workers in New South Wales', tendered by Ms Nicola Street.

## **6. Adjournment**

The committee adjourned at 2.58 pm, until Monday 12 September 2022, Room 1254, Parliament House, Sydney (report deliberative).

Vanessa O'Loan

**Committee Clerk**

### **Draft minutes no. 15**

Monday 31 October 2022

Select Committee on the Impact of Technological and Other Change on the Future of Work and Workers in New South Wales

Room 1043, Parliament House at 2.04 pm.

#### **1. Members present**

Mr Mookhey, *Chair*

Mr Amato

Mr Donnelly (*substituting for Mrs Houssos*)

Mrs Houssos (*participating*) (*via WebEx*)

Mr Mallard

Mr Pearson

Mr Searle

#### **2. Apologies**

Mr Banasiak, *Deputy Chair*

Mr Barrett

Ms Boyd

#### **3. Previous minutes**

Resolved, on the motion of Mr Amato: That draft minutes no. 14 be confirmed.

#### **4. Correspondence**

The committee noted the following items of correspondence:

##### ***Received:***

- 6 April 2022 – Email from Mr Leon Sun to the Chair, providing an update on Hungry Panda employee conditions
- 29 June 2022 – Email from Mr Peter Lewis, Director, Centre for Responsible Technology, Australia Institute, providing additional information to the inquiry in relation to automation and workplace surveillance

- 26 August 2022 – Email from Ms Lauren Kelly to the secretariat, advising the United Workers Union will not be making a further submission to the inquiry in relation to automation and workplace surveillance
- 20 September 2022 – Email from Mr Dylan Smith to the secretariat, advising the Public Service Association of NSW will not be making a further submission to the inquiry in relation to automation and workplace surveillance.

Resolved, on the motion of Mr Searle: That the committee accept and publish additional information from Mr Peter Lewis, Director, Centre for Responsible Technology, Australia Institute, received 29 June 2022.

#### 5. **Legal advice provided by Professor Gabrielle Appleby**

Resolved, on the motion of Mr Donnelly: That the committee publish the legal advice provided by Professor Gabrielle Appleby, Faculty of Law and Justice, University of New South Wales, to the Clerk of the Parliaments, dated 9 April 2021, in relation to the power of committees to summons witnesses outside of the State of New South Wales.

#### 6. **Online articles circulated by Mr Searle**

The committee noted the following articles circulated by Mr Searle following the 29 June 2022 hearing:

- California Labor & Employment Law Blog, *California Labor Commissioner Gives Insight into 2022's Warehouse Distribution Quota Law*, <https://www.callaborlaw.com/entry/california-labor-commissioner-gives-insight-into-2022s-warehouse-distributionquotaw#:~:text=Under%20this%20new%20law%2C%20employers,they%20are%20expected%20to%20meet>
- Hogan Lovells, Engage: Legal insight and analysis, *Spain to create Europe's first supervisory agency for artificial intelligence*, 13 January 2022, <https://www.engage.hoganlovells.com/knowledge-services/news/ai-algorithms-part-6-spain-to-create-europes-first-supervisory-agency-for-artificial-intelligence>.

#### 7. **Answers to questions on notice**

The following answers to questions on notice and additional information were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Dr Josh Healy, Senior Lecturer in Employment Relations, The University of Newcastle, received 29 June 2022
- Professor Ariadne Vromen, Professor of Public Administration, Crawford School of Public Policy, Australian National University, received 8 July 2022.

#### 8. **Consideration of the Chair's draft report**

The Chair submitted his draft report entitled 'Impact of technological and other change on the future of work and workers in New South Wales – Second report: Workplace surveillance and automation', which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Searle: That Recommendation 1 be amended by omitting 'undertake a review of' and inserting instead 'update'.

Resolved, on the motion of Mr Donnelly: That Recommendation 2 be amended by inserting at the end:

'and:

- clarify that the law applies to surveillance of all work done in New South Wales regardless of whether the surveillance occurs in New South Wales or another jurisdiction
- provide clear protection for freedom of association.'

Resolved, on the motion of Mr Searle: That:

- a) paragraph 2.43 be amended by omitting 'review' and inserting instead 'update'
- b) paragraph 2.44 be amended by omitting 'review' and inserting instead 'update'
- c) Recommendation 3 be amended by omitting 'review and' before 'legislative amendment'

Resolved, on the motion of Mr Searle: That paragraph 2.47 be amended by:

- a) omitting 'Notwithstanding the aforementioned review' before 'the committee'
- b) omitting 'also' before 'of the view'.

Resolved, on the motion of Mr Donnelly: That Recommendation 7 be amended by omitting 'industrial relations laws' and inserting instead 'work health and safety and other laws'.

Mr Donnelly moved: That Recommendation 7 be amended by inserting the following new dot point at the end:

- '• a right for registered organisations to inspect software/platforms/code/algorithms/apps used to allocate work and set workloads.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Mookhey, Mr Pearson, Mr Searle.

Noes: Mr Amato, Mr Mallard.

Question resolved in the affirmative.

Resolved, on the motion of Mr Donnelly: That the following new recommendation be inserted after paragraph 3.63:

**'Recommendation X**

That the NSW Government consider amending work health and safety laws to regulate the allocation of work by software/platforms/code/algorithms/apps expressly providing for:

- allocation of work must not be unsafe, excessive or create unreasonable workloads
- allocation of work must comply with requirements of industrial instruments covering the work
- allocation of work must not use discriminatory attributes in the distribution of work
- allocation of work must promote a fair and equitable distribution of work. Systems should promote a right to disconnect through a fair rotational allocation of work system, rather than an always on fastest finger approach to work allocation.'

Resolved, on the motion of Mr Donnelly: That the following new recommendation be inserted after paragraph 3.65:

**'Recommendation X**

That the NSW Government consider ways to increase funding for Technical and Further Education and Vocational Education and Training programs, including making them accessible and applicable to regional New South Wales.'

Resolved, on the motion of Mr Donnelly: That the following new recommendation be inserted after paragraph 3.65:

**'Recommendation X**

That the NSW Government facilitate a tripartite industry approach, including employers and registered organisations, to training and skills development.'

Resolved, on the motion of Mr Searle: That the following new committee comment be inserted after paragraph 3.69:

'In addition, for the reasons outlined in the earlier section of this report on workplace surveillance, the committee is of the view that recommendations 1-6 should apply also to the introduction of new technologies in the workplace.'

Resolved, on the motion of Mr Searle: That the committee agree in principle to the insertion of a new recommendation after Recommendation 9 to replicate the sentiment of Recommendations 1 to 6 for automation, subject to the circulation of draft wording for members' consideration and agreement.

Resolved, on the motion of Mr Donnelly: That Recommendation 9 be amended by inserting at the end:

'including by considering:

- funding by employers and government to support the training of employees in industries facing job displacement from automation
- modern termination, change and redundancy laws that focus on re-skilling and re-deployment, with redundancy as a last resort.'

Mr Donnelly moved: That the draft report as amended be the report of the committee and that the committee present the report to the House.

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Mookhey, Mr Pearson, Mr Searle.

Noes: Mr Amato, Mr Mallard.

Question resolved in the affirmative.

Resolved, on the motion of Mr Searle: That:

- transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, a discussion paper, legal advice and correspondence relating to the inquiry be tabled in the House with the report;
- upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;
- the secretariat is tabling the report in the House on Tuesday 8 November 2022;
- the Chair to advise the secretariat and members if they intend to hold a press conference, and if so, the date and time.

## 9. Adjournment

The committee adjourned at 2.34 pm, *sine die*.

Anthony Hanna  
Committee Clerk



