

**Submission
No 18**

**INQUIRY INTO IMPACT OF TECHNOLOGICAL AND
OTHER CHANGE ON THE FUTURE OF WORK AND
WORKERS IN NEW SOUTH WALES**

Organisation: Public Service Association of New South Wales

Date Received: 3 September 2020

SUBMISSION



Submission on the impact of technological and other changes on the future of work and workers in New South Wales



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Authorised by Stewart Little, General Secretary, the Public Service Association of NSW, 160 Clarence Street, Sydney

Who we are

The PSA represents employees in all state agencies and emergency services of this state. These include members within Police, Fire & Rescue NSW, Corrective Services, Juvenile Justice, the State Emergency Service (SES), National Parks and Wildlife, Roads and Maritime Services, the Rural Fire Service, and Forestry Corporation. We welcome the opportunity to participate in this inquiry. We do so as part of a broader movement and acknowledge the roles of our fellow Unions and their members. We endorse the submissions of other unions and add our voice to their recommendations.

The Public Service Association of NSW (PSA) is an active, member-driven union. Our members have a long and proud tradition of improving the lives of the people of New South Wales through delivering a diverse range of services in the public sector and related entities, state owned corporations, TAFE NSW and universities. We proudly represent 39,000 members spread over almost 5,000 worksites.

Executive summary

The world of work is changing but in many ways it represents not progress forward, but a regression to older forms of unregulated work that devalues citizens and workers. This change is not a natural progression of introduction new technology, but a feature of policy choices.

At the same time, the collection and commercialisation of data is taking place in largely opaque ways, for the benefit of commercial entities and not the workers and citizens who generate the data.

NSW Government is well placed as the country's largest employer to lead the way on the ethical and innovative use of data, and to regulate our economy to be fair to all. Some of our workplace legislation needs to be updated, and our public service needs to be equipped to deliver smart, future-oriented advice, policy, support and regulation to drive NSW as the employer of choice and investment location of choice when it comes to data, technology and innovation.

Recommendations

Recommendation 1: That government adopt a principle of 'employer of choice' in terms of technology facilitated work, particularly focussing on the recruitment of women, regional workers and people with disability.

Recommendation 2: That government adopt a principle that its procurement will seek to reward partners and purchasers that make good use of technology in ways that enhance the social fabric and ensure labour standards.

Recommendation 3: That government adopt a platform and provider-agnostic approach- that is, no one technological approach or provider will work to enhance the work of government, and each platform, provider or solution should be assessed on its merits.

Recommendation 4: NSW Government should lift its staffing cap and efficiency dividend, and fund an ambitious public sector ICT and data expertise development 10-year plan. This would include expanding the services offered by NSW Data Analytics Centre.

Recommendation 5: NSW Government should cap contractor and consultant numbers and funding, and begin a transition of ICT expertise to direct employment within NSW Government.

Recommendation 6: NSW government should establish a research and regulatory body to work with industry and develop rich data about the gig and on demand economy, and work to develop platforms and solutions to enhance the work and services of the taxpayers of NSW.

Recommendation 7: NSW government should establish a framework for the fair remuneration of all NSW residents employed in the gig economy, based on the worth of the work performed and the value delivered, as well as overarching principles around the need for fair standards for citizens.

Recommendation 8: that the NSW Government investigate relevant other jurisdictions and begin consulting on such legislation with the community around how to manage and regulate algorithmic decision-making.

Recommendation 9: That NSW government fully fund courses at TAFE NSW, ensuring all the staff, materials and equipment necessary are available. This should include modern, up-to-date facilities with innovative research facilities and permanent, well-supported staff.

Recommendation 10: That NSW government make TAFE free for students.

Recommendation 11: That the *Workplace Surveillance Act 2005* be substantially amended, after undertaking extensive consultation, and that it be given a set of overarching principles or objects to allow its expansion into new areas of technology as they develop.

Recommendation 12: that the NSW government introduce a 'citizen's data charter of rights' as relates to its interactions with citizens and their data, detailing what data is collected, how it is stored, and how it is used. Where data is commercialised, these profits should be returned to citizens, and citizens should retain profit shares in any equity their data generates.

Recommendation 13: A NSW Data Ombudsman and Office of the Data Ombudsman should be established and given the power to oversee, monitor and enforce government and commercial data generation and use.

Recommendation 14: Workers should be given regular and ongoing training in data hygiene, management and generation.

Terms of reference

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,
 - (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

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

As the committee would be aware, however defined, employment in Australia is changing and becoming less secure. The types of jobs we do and the industries we do them in are very different today than in the 1970s. There is more part-time work. There is more casual work. The balance of industrial power has shifted in favour of employersⁱ. Not all of this change is negative- there are more women engaged in the paid workforce than ever before.

The on-demand or gig-economy is a feature of the employment and work landscape in a way that was inconceivable even five years ago. However, this lessening of secure, quality jobs is not the inevitable result of technological change, but of policy choices.

Technology-facilitated work is not inherently insecure or bad for workers. Email has replaced physical correspondence in many respects but that does not change the act of writing in an employment context: it is still writing paid for by an employer and performed by an employee. Fewer post office employees now deliver correspondence but more are needed to deliver internet shopping, and facilitate movement of physical items between what has become a network of virtual offices during the pandemic.

Technology is facilitative of many aspects of work, like recruitment and training. It allows easy research and policy formation, meetings, and workplace contact. Workers have better contact on more levels with the communities they serve and each other, and can provide better insights to their employers.

Technology allows the performance of work; it does not dictate the wages and conditions of that work. Policy does.

As technology changes so does work, but it does not alter the reality that the work-for-wages exchange takes place and the terms under which this takes place are matters for employees and their unions, employers, and regulators. Technology-facilitated work is not inherently exploitative, but can become so when poorly regulated- the same as all forms of work.

Equally, there is no moral or social benefit inherent in introducing any particular technology, interface or algorithm. Any technological intervention is either facilitative of improvements to the social fabric or it is not, and policy makers should respond accordingly. As with other myths, the notion that technological change is inherently virtuous should be examined critically. We now know that Australians do not favour privatisationⁱⁱ, despite its place in public policy orthodoxy for some decades. The replacement of public with private management does not of and by itself serve the public good, just as private ownership alone

was not sufficient to maximize value to the shareholders of many large corporationsⁱⁱⁱ. The same is true for the uncritical introduction of technology without policy frameworks.

Given this, the question then becomes how NSW Government should act as regulator and as the largest employer in the country. 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.

As earnings depress as a result of the Covid-19 economic downturn (and before), we have seen workplaces adopt existing technology to better perform their work in ways that are safe. Covid-19 has upended many established ideas about what the workplace looks like and how work is performed. This opens up possibilities for our workplaces, in particular for women, regionally based Australians and people with disability. At a time when the employment of people with disability in the public service has been falling steadily, employers cannot now convincingly make the old arguments that work cannot be done at home for most types of work.

The data generated by technology and the research opened up by technology should not be ignored. More information can, and should, mean better decisions from governments.

Recommendation 1: That government adopt a principle of 'employer of choice' in terms of technology facilitated work, particularly focussing on the recruitment of women, regional workers and people with disability.

Recommendation 2: That government adopt a principle that its procurement will seek to reward partners and purchasers that make good use of technology in ways that enhance the social fabric and ensure labour standards.

Recommendation 3: That government adopt a platform and provider-agnostic approach- that is, no one technological approach or provider will work to enhance the work of government, and each platform, provider or solution should be assessed on its merits.

- (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',
- (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',

(g) (iv) the effectiveness of the enforcement of those laws and regulations,

The 'on demand' or 'gig economy' is a new permutation of the piecework economy- it is a new place for workers to find this work; it is not necessarily in and of itself a new form of work. In many ways, it is return to an older pattern of labour, one that predates modern employment standards, such as work health and safety regulation and the eight-hour day. To assess the impact of this work, we need a skilled and involved regulator equipped to understand and report on it – using some of the new data tools not available in the past.

Our public service is underfunded by virtue of both a 'staffing cap' and an 'efficiency dividend'. The first holds staffing numbers at an artificially low number equivalent to the number of people employed in 2011- but crucially, does not cap expenditure on consultants or contractors. This prevents the development of deep technological expertise in areas of information and communications technology (ICT) within government, in both a practical and planning sense. Multinationals like Amazon are recruiting for roles^{iv} where the specific outcome is to see greater uptake of its services across government, despite recent public failures of this model to deliver for citizens or governments^v.

As the recent public failure of the Covid Safe app demonstrates, this model does not deliver good services, nor does it deliver a skilled public service owned by the citizens of NSW for the citizens of NSW. While it is unclear whether it was an outsourced provider or the Federal public service that was responsible for the Covid Safe app and only reaching a 25% success rate on testing^{vi}, this failure speaks to a loss of expertise in the public service. The skills and expertise to build sophisticated, well-designed technology and platforms does not reside with corporations; it resides within the knowledge of skilled workers. The sort of work done estimating the required uptake for apps to work and grappling with the ethical dilemmas of mass surveillance in the service of public health could be done by government workers^{vii}. These workers with this expertise could be working for the taxpayers of NSW now, if the government was prepared to invest in ICT infrastructure and knowledge via skilled workers. It cannot do this while it imposes a cap on itself. NSW public service apps (Fires Near Me as one example) are popular and useful; NSW Government should prioritise retaining and fostering the expertise to build more things like this.

The efficiency dividend also prevents the development of technological innovation and expertise. Each year, departments and agencies must cut into their budget and return it in the form of a 'dividend'. There is a pro-outsourcing and privatisation logic to this that drives expertise from government. With no cap on contractors and consultants, ICT expertise is outsourced. Overall costs to taxpayers are the same or even higher, while our public services are stripped of expertise^{viii}.

The benefit of this does not go to the workers with the relevant expertise- it goes to the profit margins of their employing entity, in many cases a consulting or labour hire firm. The NSW taxpayer does not see the benefit of it, as those skills are not retained for NSW Government. NSW Government could function as a source of expertise and develop innovative products and solutions that could be marketed to business, but instead the opposite happens. This is a direct result of policy choices that hinder the growth of NSW Government, and NSW, as a technology and innovation powerhouse. The exact nature of the NSW workforce- in the gig economy and otherwise- is amenable to change through policy decisions. This is but one example.

Audits of public sector salaries have demonstrated the inadequacy of operation between wages policy and the inability to establish suitable award rates in the ICT market, that allow for the hiring of suitable individuals in house.

The gig economy, like every other part of the economy, can be shaped by policy to provide the best standard of living for the people of NSW and provide a thriving environment for good, secure jobs.

The same is true of the regulation and charting of the gig economy. NSW could research, monitor and regulate the gig economy to determine the best ways to incorporate this sort of facilitated work into our workforce, without trading off protections and standards that Australian should expect. This sort of research and evaluation and translation work demands a skilled workforce and regulator- something NSW cannot have in the context of budget cuts and staffing caps. NSW deserves a home for this type of expertise and innovation within government, where all our services can benefit from expertise and new developments can be monetised, sold to industry, and returned as wealth to taxpayers.

There are simple principles that determine how wages should be used to value work that can guide NSW government. The gig economy has changed part of how work takes place, and other technological changes will follow that do the same. This is nothing new. Goods are still transported by humans, regardless of whether it is by horse and cart or truck. Someone still drives. Correspondence is still sent, electronically but not physically. Work still needs to be done and the tools used to do it should not alter how the citizens involved are valued and protected. This has been done with other forms of precarious work in the past, and can be done again.

As employer, regulator and leader in the field, NSW Government can take a principled approach that it will value the worker as well as the work. To quote:

“I cannot think of any other standard appropriate than the normal needs of the average employee, regarded as human being living in a civilised community. I have invited counsel and all concerned to suggest any other standard; and they have been unable to do so. It seems to me... as the first and dominant factor, the cost of living as a civilised being.

...as wages are the means of obtaining commodities, surely the State, in stipulating for fair and reasonable remuneration for the employees, means that the wages shall be sufficient to provide these things, and clothing, and a condition of frugal comfort estimated by current human standards^{mx}.

The current failures to regulate this type of work arrangements mean that the employment standards and protections that our legislators have enshrined are not supporting all of our workforce.

We have however, seen government catch up with areas such as providing changes to vehicle insurance as on demand transportation has developed.

Recommendation 4: NSW Government should lift its staffing cap and efficiency dividend, and fund an ambitious public sector ICT and data expertise development 10-year plan. This would include expanding the services offered by NSW Data Analytics Centre.

Recommendation 5: NSW Government should cap contractor and consultant numbers and funding, and begin a transition of ICT expertise to direct employment within NSW Government.

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Recommendation 7: NSW government should establish a framework for the fair remuneration of all NSW residents employed in the gig economy, based on the worth of the work performed and the value delivered, as well as overarching principles around the need for fair standards for citizens.

(ii) the automation of work,

Thus far, the promises of automation have not delivered. In one high-profile government case, automation has been an expensive and devastating failure. The speculative invoicing algorithm now known as 'Robodebt' is an example of why automation, particularly in the context government services, is fraught.

In theory, automation delivers 'efficiency' by removing people and replacing them with machines or automated processes. In the case of Robodebt, an algorithm was meant to replace a human assessment of someone's income and other payments to determine whether there was an outstanding balance owed to the citizen or to Centrelink. Prior to the algorithm, a worker made this assessment. The algorithm instead assessed against an estimated income. The 'efficiency' was the removal of the worker.

A trained worker could tell, for example, that a pay slip from “XYZ Childcare Pty Ltd” one fortnight and a payslip from “XYZ Child Services Australia” the next are probably from the same employer, where the citizen in question is a childcare worker, and their tax-free threshold is determined accordingly. This may seem like a common-sense assessment, but an algorithm has no such high-level skills. The removal of a person making these assessments from a government process had terrible consequences in the case of Robodebt. This speculative invoicing of citizens was implicated in a number of tragic suicides, has led to an expensive class action, High Court action, saved government no money with money required to be returned and damaged the faith citizens have in government.

‘Efficiency’ means, in many cases, removing the cost of a labour input, i.e. a wage, from a process. In the case of Robodebt, this proved to be a false economy. 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.

A recent case in NSW would be that of driverless trains. Whether or not they meet required performance standards (and in context perhaps we should be grateful they fit the tracks and/or under bridges) is one thing, but removing drivers made them less safe for commuters. The human cost of ‘efficiency’ falls on the worker who has lost a job. Their wage is then taken out of the economy, which removes demand from the economy all of us rely on. The cost of resolving problems or mitigating harm from incidents may be untold.

Similarly in the last few weeks we have seen many millions of dollars spent on automated claims management software at Insurance and Care NSW which appears to have also been associated with poor return outcomes and reduced solvency of the scheme to the tune of \$4 billion.

Thus far, the automation of government services has seen no net financial benefit to citizens, but people have lost their jobs and are less safe. Some of the risks are even more insidious, with one system in the US embedding systematic racism in a ‘decision support’ tool^x.

Government also has a role as regulator, not just as a user of automated systems.

A Monash academic has laid out how government can design and implement systems that support human decision making but incorporate principles of fairness and equity. Good automation requires an overlay of human ethics. In brief, this consists of:

1. consulting those who are likely to be significantly affected by a new process *before* it is implemented, not after;
2. checking for potential unfair bias at the process design phase;

3. ensuring the underpinning rationale of the decisions is transparent, and the outcomes are relatively predictable;
4. making a human accountable for the integrity of decisions and their consequences.

In the European Union, decision makers are already required that algorithmic decisions that have significant consequences for any person must involve a human review component. It also requires organisations to provide a transparent explanation of the logic used in the automated processes.

The United States Congress is considering a law that would require organisations to consider “the risks that the automated decision system may result in or contribute to inaccurate, unfair, biased, or discriminatory decisions impacting consumers”.

Such a statute would benefit the consumers of NSW, and should be applied to both government and non-government organisations alike. This would require a regulator in NSW Government with enforcement and investigation powers, who can field complaints and also act as a source of expertise.

Recommendation 8: that the NSW Government investigate relevant other jurisdictions and begin consulting on such legislation with the community around how to manage and regulate algorithmic decision-making.

(iii) the different impact of (i) and (ii) on regional New South Wales,

As the committee knows, there is relatively poorer access to services in regional NSW. Poorer infrastructure services in small towns, rural communities and remote areas could lead to limited opportunities for growth and may undermine the long-term viability of some communities.^{xi}

As the pandemic has shown us, better use of technology frees our workplaces of out-of-date notions, like that all work must take place in an office setting. Some work has its own inherent constraints (Corrections Officers are unlikely to be able to work from home, as are National Parks firefighters whilst fighting fires) but many of our members are working safely at home, facilitated by technology, and can continue to do so, and at times with greater contact with the public or co-workers. Doing so, should help to reverse the trend of falling employment of people with disability in the NSW public service, as the excuse *‘this job cannot be done at home’* has been shown to be just that. We know from our members, like those in Service NSW, that good quality public service work can be done from locations other than an office.

Due in part to budget cuts, the ‘regionalisation’ of NSW public service jobs has not taken place at the rate PSA thinks it should. PSA supports more jobs going into regional areas, and more jobs in the NSW public service overall to support the citizens of NSW. There is huge potential for growth in jobs in regional areas, now that the Covid-19 pandemic has shown employers how to do remote work. Workers

will not need to relocate for their work- instead, the jobs can come to them and they can continue to sustain their communities

This relies on good quality infrastructure, such as NBN, and the technical support of ICT staff equipped to handle remote work setup. Our above recommendations on the importance of building public sector ICT capacity stand in this respect, as it is part of building a regionally-based workforce to do the work for citizens of NSW.

- (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,
- (e) the adequacy of the New South Wales skills and education system in helping people adjust to the changing nature of work
- (l) (ii) reform the skills and education systems to help people adjust to the changing nature of work,

The attractiveness of NSW as an investment destination will depend on many things, only some within the control of government. Some of these factors will have been changed by the pandemic. Others, however, are more important than ever and entirely within the control of government. One such critical factor is having a skilled workforce. Whether someone works from home in San Francisco or Sydney is less material now than ever- but their skillset will be non-negotiable for the jobs of the future. The physical location of a worker is becoming less important to their work by the day for many jobs- but the skills needed by employees are not amenable to adjustment in the way that location can be.

In this context the NSW Government chronic under-investment in our vocational sector and our TAFE system is unsustainable. For NSW to be a desirable investment education, the citizens of NSW must have the skills to make desirable employees. This will then, in turn, see the wages paid for these skilled workers cycle through our economy.

Recommendation 9: That NSW government fully fund courses at TAFE NSW, ensuring all the staff, materials and equipment necessary are available. This should include modern, up-to-date facilities with innovative research facilities and permanent, well-supported staff.

Recommendation 10: That NSW government make TAFE free for students.

(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,

Workplace surveillance has advanced significantly. Some is direct surveillance, but some is indirect- where systems and technologies which perform a purpose can also be used to monitor workers. Examples for our members include: tracking and logging of website visits, keystroke logging, call duration trackers, tracking the locations of phones and/or vehicles, call recording and tracking entry and exit to building with individualised swipe cards.

Our members are often unaware how the records they generate about themselves are kept, and for how long, and for what purpose. Some have been disciplined because of the data kept.

Underpinning any workplace surveillance laws should be a clear commitment to the principle that workers are only surveilled when there is a genuine purpose and workplace need, and that if there is incidental surveillance of them that employers not use that data to monitor workers without reasonable cause.

While the below is not an exhaustive list, there are a few areas the *Workplace Surveillance Act 2005* needs revision and update. For example:

1. The definition of 'work' does not envisage work from home, or in another place, that adequately covers all the circumstances workers now face as a result of Covid-19, particularly around the provisions on monitoring change rooms and bathrooms;
2. The definition of 'surveillance' does not adequately capture 'passive' ways of monitoring or generating data on an employee- it captures active monitoring, rather than the data workers generate about themselves in the course of doing their ordinary work, such as logging in and out, entering and exiting buildings or using mobile phones with tracking software as part of asset lost prevention;
3. While the act defines 'covert surveillance' it does not adequately capture data generation (as above at 2);
4. Notices of surveillance under the Act are only point in time, and do not require ongoing consent, consultation or updating;
5. The definitions of 'camera' and requirements for notification related to fixed cameras, not webcams, smart devices or phone cameras specifically, which need to be accounted for;

6. The requirements for computer surveillance do not encapsulate adequately modern forms of monitoring that are not explicit 'tracking' software, such as keystroke logging, web browser filters, mobile phone tracking or bandwidth usage monitoring;
7. The definitions of surveillance and devices should be expanded to include (for example) modern phones, tablets, vehicle technologies and other devices used in a modern workplace context, as well as apps and software;
8. The bar for employers is too low as regards computer surveillance as it only requires the employer notify the employee of surveillance in a way where 'it is reasonable to assume' that the employee is aware of and understands the policy (as an employer is required to have a policy on employee surveillance at work);
9. The meaning of what might be captured by 'work surveillance device' should be clarified, as the 15 years since the drafting of the Act has seen technology advance significantly, and clarify how this might interact with employees using their own device/s or services;
10. The Act does not cover new platforms and features such as instant messaging, boards, collaboration tools, videoconferencing, and other means of workplace communication that can be used to surveil the behaviour of employees.

Recommendation 11: That the *Workplace Surveillance Act 2005* be substantially amended, after undertaking extensive consultation, and that it be given a set of overarching principles or objects to allow its expansion into new areas of technology as they develop.

- (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,

Our members generate data about themselves and the citizens of NSW they serve every day. These sorts of data sets might include (for example, in a call centre setting) monitoring what citizens call about, how long those calls take, and tracking where those citizens are calling from. It might include doing surveys of citizens, or monitoring how many formal or informal information (GIPA) requests are made. It might include recording data that their employer then digests for an app, such as Fires Near Me. It may also include information about Community Corrections (Probation and Parole) and visits to parolees and

their families. This information about citizens can have commercial value as well as being highly sensitive and personal.

Our members report being unsure what happens to the citizen data they collect, or if it is used to generate further data sets (for example, the demographics of people who contact your call centre and what they call about, the number of fines for certain offences issued and associated demographics, the percentage of calls or contacts made and associated demographics, such as height/weight/appearance, others personal characteristics).

Citizens also generate a lot of data about themselves every day though using their phones, shopping online, messaging, and working. This trend is accelerating through the use of check in platforms for Covid-19 purposes. For the most part, this data is opaque, and disclosures from organisations are not forthcoming in ways that are proactive and easy to understand.

Many members complain about Facebook pixel ad tracking (for example) without understanding how that advertisement has been generated to follow them across platforms. Most do not have the skills to turn off, block, or otherwise control their interaction with this sort of data tracking. Most are unaware such option exist.

Citizens and workers should be in control of the data they generate, and where it is used to generate profit, they should see the benefit of it. Citizens and workers also need to be educated about what data they are generating and how it is put to use. Where data can be used (subject to caveats about algorithmic assumptions) to improve the services available to taxpayers, NSW Government should collect it- but be transparent and continuously disclose it is doing so and why.

Where commercial entities generate data about their customers, they should be obliged to disclose this and the commercial uses it is put to on an ongoing basis. This disclosure should not be just to customers, but to a regulator for the purposes of ongoing monitoring.

Recommendation 12: that the NSW government introduce a 'citizen's data charter of rights' as relates to its interactions with citizens and their data, detailing what data is collected, how it is stored, and how it is used. Where data is commercialised, these profits should be returned to citizens, and citizens should retain profit shares in any equity their data generates.

Recommendation 13: A NSW Data Ombudsman and Office of the Data Ombudsman should be established and given the power to oversee, monitor and enforce government and commercial data generation and use.

Recommendation 14: Workers should be given regular and ongoing training in data hygiene, management and generation.

- (k) how government as a best practice employer should manage and use the information generated by its workforce,

Given it is Australia's largest employer, NSW Government has a unique leadership role to play as employer. For the most part the information it generates will be about citizens of NSW. To future proof its response, NSW Government should be guided by a set of principles:

1. It should maintain the highest possible data security and integrity, including imposing penalties for breaches on relevant parties who fail to uphold security, regular and ongoing training for staff, and in-housing data and ICT infrastructure, hosting and maintenance;
2. NSW should aim to become an ethical data powerhouse, leading the world not just on good use of data to provide better services but leading on public policy that upholds the rights of citizens and workers to their data;
3. NSW Government should aim to be a 'host of choice' for commercial, non-government and other governments, setting up world-class ICT infrastructure and offering hosting and data services to the world as a strategy for building NSW's sovereign wealth and attracting investment;
4. NSW Government should aim to be an employer of choice for ICT professionals and build a public service that is data literate and equipped to confidently serve the citizens of NSW;
5. Citizens should be given oversight of how data is generated, managed, stored, and used, through a cooperative and consultative mechanism that include workers who generate the data;
6. NSW Government should act in partnership with its citizens and workforce, holding data as a common asset to be managed for the good of NSW citizens;
7. NSW Government should regulate its workforce as a best-practice employer, and aim to lead the world in the agile, ethical and effective use of data to improve citizen's lives without compromising worker autonomy;
8. It should not monetise citizen data for commercial use, and should use data only to improve services or develop commercially viable products or platforms for ongoing lease, thus returning a dividend to citizens;
9. It should not monetise workers, in terms of the data they generate about themselves, except to improve services or develop commercially viable products or platforms for ongoing lease, and in this instance returning a dividend to workers;
10. It should not on-sell citizen or worker data to anyone, and have the strictest guidelines around how data may be used in partnership arrangements- for example, to deliver better services or return a dividend, and where no ongoing commercial gain from the data will be available to the commercial partner, who should only be engaged on a fee for service basis.

- ⁱ Sobyra, R, "Australian jobs aren't becoming less secure", *The Conversation*, 17 July 2018, <https://theconversation.com/australian-jobs-arent-becoming-less-secure-99739>
- ⁱⁱ Quiggin, J, "People have lost faith in privatisation and it's easy to see why", *The Conversation*, 10 August 2016, <https://theconversation.com/people-have-lost-faith-in-privatisation-and-its-easy-to-see-why-63198>
- ⁱⁱⁱ Goodman, J, and Loveman, G, "Does privatisation serve the public interest?", *Harvard Business Review*, November-December 1991, <https://hbr.org/1991/11/does-privatization-serve-the-public-interest>
- ^{iv} "Would you like to be part of a public policy team focused on increasing awareness and adoption of Amazon Web Services (AWS)* and the utility public cloud model amongst enterprises and the public sector and regulated industries in Australia?" from advertised 'Federal Government Policy Lead' role, LinkedIn, August 2020, https://www.linkedin.com/jobs/view/1983856149/?eBP=CwEAAAF0HvoN04MPgZTau89WqJH9kB6uUJT4nTILwG4b8-swv2xPC0zL5kDrM1JAzG0962r81CB3azZE_jVYmY2zOYyiwplUAjHPK49mgRTNqyHaM9iXt719p5x3U7TRlaX74TW5_niykTu3H3LzBDVN_bwWD8cBaQ6w0WhgJvnthxxJpnPToWFlmEK0HyvUKG6VnHNQFMRsP5T5o3V_6MyetQyR6zgLmS8ZfQ-SFxDhuJ_fkJRkphdeq7S9l14KFajAJsPKwMQbUwTYJiajvxKM981qjO4aROE6e4M7sEkkSb2nU4SN8SSEzUmlw4V60kOnmVd8rnyg9WbdtbxJ_6qbS_f3CrtDL8ahYV9HDf4DQRr1_kPDTptqF_oilp9PuC56esHaDibE-pxyM4P&recommendedFlavor=IN_NETWORK&refId=2540e1ef-201f-4675-a577-c109b7924251&trk=flagship3_search_srp_jobs
- ^v As at June (and later reporting, July) the Covid Safe app was yet to identify any otherwise identified contacts, making it an expensive duplication of the work done by contract tracers. Bogle, A, "COVIDSafe has been downloaded by millions, but yet to identify contacts (and authorities say that's a good thing)", *ABC*, Thursday 11 June 2020, <https://www.abc.net.au/news/science/2020-06-11/coronavirus-contact-tracing-app-covid-safe-no-close-contacts/12343138>
- ^{vi} <https://www.abc.net.au/news/science/2020-06-17/covidsafe-contact-tracing-app-test-documents-rated-poor-iphone/12359250>
- ^{vii} For example, Dr Andrew Chen's (of the Centre for Informed Futures at University of Auckland) work on the various Covid-19 apps, see Chen, A, "Covid-19: the tough questions on a digital contact-tracing app", *The Spinoff*, <https://thespinoff.co.nz/society/29-04-2020/covid-19-the-tough-questions-on-a-digital-contact-tracing-app/>
- ^{viii} See Auditor General NSW, <https://www.audit.nsw.gov.au/our-work/reports/managing-it-services-contracts>
- ^{ix} *Ex Parte v H McKay*- (1907) 2 CAR 1, Higgins J, President, 8 November 1907
- ^x Sarder, M, "From robodebt to racism: What can go wrong when governments let algorithms make the decisions", *The Conversation*, June 5 2020, <https://theconversation.com/from-robodebt-to-racism-what-can-go-wrong-when-governments-let-algorithms-make-the-decisions-132594>
- ^{xi} An Assessment of Australia's future infrastructure needs, the Australian Infrastructure Audit 2019, p. 42 <https://www.infrastructureaustralia.gov.au/sites/default/files/2019-08/Australian%20Infrastructure%20Audit%202019.pdf>