

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

Organisation: Shop, Distributive and Allied Employee's Association (NSW
Branch)

Date Received: 3 September 2020



SDA NSW Submission

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

Legislative Council Select Committee

September 2020

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Introduction

1. About the SDA

1.1 The Shop, Distributive and Allied Employee's Association (NSW Branch) is one the largest trade Unions in NSW with approximately 60,000 members. The majority of these members are young people and women and there are also a large proportion who live and work in regional NSW.

1.2 Registered in 1908, the SDA has coverage of areas including retail, fast food, warehouse, drug and cosmetic manufacturing, distribution, pharmacies and modelling.

2. Recommendations

Recommendation 1 That the NSW Government adopt the 10 points outlined in the SDA's Gender Impact Paper at Annexure A

Recommendation 2 That the NSW Government endorse the SDA's 10 point safety plans and encourage all shopping centres and retail and fast food employers in NSW to adopt these safety measures.

Recommendation 3 That the NSW Government work with the Federal Government to introduce Paid Pandemic Leave for all workers.

Recommendation 4 That the NSW Government work with Federal Government to introduce/amend legislation to require corporate accountability in relation to introduction of new technology especially where it leads to job displacement.

Recommendation 5 That the NSW Government work with Federal Government to strengthen and expand consultation mechanisms with workers to sufficiently incorporate technological change and require more than mere consideration of worker views on any proposed changes.

Recommendation 6 That the NSW Government immediately pay the 2.5% wage rise to public sector employees.

Recommendation 7 That the NSW Government remove the public sector wage cap.

Recommendation 8 That the NSW Government review all applicable NSW legislation including the Long Service Leave Act 1955 (NSW) to introduce portable entitlements.

Recommendation 9 That the NSW Government implement a set of minimum standards for independent contractors including the minimum wage, workers compensation, paid sick leave and the right to collectively bargain.

Recommendation 10 That the NSW Government dedicate resources in Safework NSW to considering the differing health and safety risks associating with gig economy work and increased automation. This should include a considered review of the risk of workload stress.

Recommendation 11 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* (NSW).

Recommendation 12 That the NSW Government immediately increase funding to Tafe and VET programs.

Recommendation 13 That the NSW Government consider ways to fund Tafe and VET programs that makes them accessible and applicable to regional NSW.

Recommendation 14 That the NSW Government continue to facilitate and industry (employers and unions) driven approach to training development.

Recommendation 15 That the NSW Government provide funding and review any means by which it can support the training of employees in industries facing job losses/redundancy whilst employees remain employed to enable a direct transition into ongoing full employment. Any funding or support should be tied to a requirement for employers to continue to employ workers whilst training occurs

or to provide a longer redundancy period. Funding and support should also incentivise employers to provide this to regional NSW and consider ways in which ongoing employment in the regions can be supported by business.

Recommendation 16 That the NSW Government consider the implementation of training funds for individual workers, with contributions made by employers, similar to a superannuation fund.

Recommendation 17 That the NSW Government amend workers compensation legislation to encompass all forms of work.

Recommendation 18 That the NSW Government conduct a review of the workers compensation scheme in NSW to reintroduce coverage for journey to and from work; to remove the cut off point for coverage (s39 of the *Workers Compensation Act 1987 (NSW)*) and to ensure that the scheme is genuinely designed to insure the worker for injury sustained at work and the ongoing impact of that injury.

Recommendation 19 That the Government should lift the tax free threshold for frontline workers to \$25000 and pay a stimulus payment for workers earning under the tax free threshold

Recommendation 20 That the NSW Government review and amend legislation including the *Workplace Surveillance Act 2005 (NSW)* to enshrine the right of workers to access, influence, edit and delete data.

Recommendation 21 That the NSW Government review and amend legislation including the *Workplace Surveillance Act 2005 (NSW)* to ensure that no form of surveillance or data collection is conducted except by consent of the worker and that this is informed consent.

Recommendation 22 That the NSW Government review and amend legislation including the *Workplace Surveillance Act 2005 (NSW)* to ensure workplace surveillance laws are updated to prohibit monitoring of lawful industrial activity, to account for new technologies and where necessary to permit the extra jurisdictional operation of such laws.

Recommendation 23 That there be development of guidance material in relation to use of social media in workplaces in consultation with unions and employers

Recommendation 24 That there be development of guidance material in relation to the collection or request of a worker(s) medical information.

Recommendation 25 That the NSW Government review and change existing legislation to ensure it sufficiently captures emerging forms of surveillance including audio and that it protects privacy of workers when they are not performing work related duties including during breaks and in restrooms in line with the suggestions outlined in Annexure C.

3. The Retail Environment

3.1 Retail is the third highest employer in NSW as at May 2020¹.

3.2 From February to May 2020 retail has experienced a 5.06% decline in employment².

3.3 Nationally at May 2020 retail is comprised of 43.3% full time, 19.38% part time and 37.33% casual employees (employees without paid leave entitlements)³.

It is noted that the ‘...ABS classifies people as employed full-time if they worked, or usually work, 35 or more hours in the survey reference week. This includes people who were employed in two or more part-time jobs and in total worked more than 35 hours⁴.’

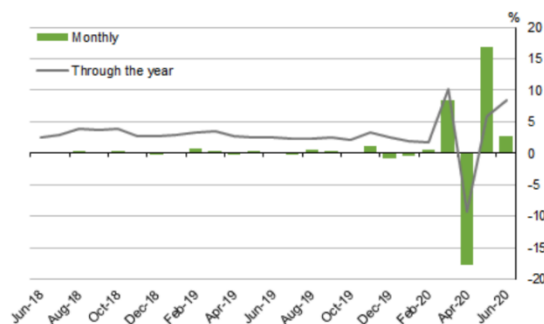
3.4 According to the Australian Jobs 2019 report⁵ the demographics of the retail trade industry consists of 56% women, 32% young workers (15-24 years old) and 32% regional workers.

3.5 The level of educational attainment in the industry is broken down as follows:

- Bachelor Degree 16%
- Cert III or higher VET qualification 26%
- Other 5%
- No post-school qualification 53%

3.6 Retail trade is experiencing a highly unpredictable period due to COVID-19. As a result of employment decline and wage stagnation, discretionary spending has and will continue to decline impacting most sectors of the retail industry. In contrast ‘panic buying’ has seen boosted sales in sectors such as the supermarket sector. In June 2020 in NSW retail trade rose by 3.7% in seasonally adjusted terms⁶. But nationally the below graph shows the extreme changes in retail trade in recent months as compared to the last two years.

Monthly Turnover, Current Prices - Seasonally adjusted estimate



Turnover at current prices seasonably adjusted - 8501.0
Retail Trade, Australia, June 2020⁷

¹ 6291.0.55.003 Labour Force, Australia, Detailed, Quarterly. Table 05. Employed persons by State, Territory and Industry division of main job (ANZSIC) Australian Bureau of Statistics as at 26 August 2020

² Ibid.

³ Ibid.

⁴ <https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/6102.0.55.001~Feb%202018~Main%20Features~Labour%20Statistics%20Explained%20Frequently%20Asked%20Questions~44#:~:text=The%20ABS%20classifies%20people%20a,s,worked%20more%20than%2035%20hours.>

⁵ Australian Jobs 2019 Department of Education, Skills and Employment

<https://docs.employment.gov.au/system/files/doc/other/australianjobs2019.pdf>

⁶ 8501.0 - Retail Trade, Australia, June 2020 Australian Bureau of Statistics Released 04/08/2020

<https://www.abs.gov.au/ausstats/abs@.nsf/mf/8501.0>

⁷ Ibid.

4. Gig Economy and Automation of Work: The Retail, Fast Food and Warehousing Context

4.1 The gig economy is a term used to describe the use of technology, usually in the form of apps, to engage workers in specific individual tasks or jobs. The idea of engaging worker in specific individual tasks or jobs is not new, but technological change is facilitating more rapid growth of gig work.

4.2 Workers in the gig economy are engaged as independent contractors, meaning minimum employment standards do not apply.

4.3 The automation of work involves the use of technology to automate tasks traditionally performed by workers. Automation of work can lead to significant increases in productivity. Automation of work also risks the workers being unemployed. However, in the right policy setting with fair and responsible employment protections, the gains from productivity and risks of unemployment can be shared by both workers and employers and lead to better outcomes for the New South Wales economy.

4.4 There are several examples within the retail, fast food and warehousing context of the introduction of gig economy and methods of automation of work. Some of these are listed below to provide insight into changes which have occurred and may occur into the future in these industries in order to contextualise considerations in this inquiry.

4.5 One significant change in the retail industry is the creeping introduction of self-service/register-free supermarkets. Currently in Australia this looks like the introduction of self-serve checkouts in many major retailers and in Mcdonalds, a major fast food operator. But looking ahead this will increasingly look like the 'Scan and Go' App introduced by Woolworths⁸ which enable shoppers to 'Scan items with your phone, bag as you shop and pay in-app.' This was introduced by Woolworths' Food Digital team called WooliesX whose focus is developing digital technologies suitable for introduction in Woolworths.

4.6 The other significant change is the increasing move towards online retailing which was amplified by the impact of COVID-19 restrictions keeping shoppers out of shopping centres. According to ABS data the online sales figure in June 2020 was approximately 365% higher than the figure published in June 2014⁹.

4.7 In warehousing Amazon provide the prime example of increasing automation and use of digital technology. Amazon have a warehouse in NSW and intend on building another to open by end of 2021 which is said will be the largest in Australia. Amazon Australia Director of Operations, Craig Fuller, is quoted as follows:

"The Amazon robotics fulfilment centre will more than double our operational footprint in Australia, enhance efficiency and safety for our associates while ultimately providing customers with wider selection and faster delivery...We look forward to creating more than

⁸ <https://www.woolworths.com.au/shop/discover/about-us/scan-and-go>

⁹ Above n5

<https://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/8501.0Main%20Features5June%202020?opendocument&tabname=Summary&prodno=8501.0&issue=June%202020&num=&view=>

1,500 jobs, the majority of which are permanent full-time jobs, with the opportunity to work alongside advanced robotics to deliver the ultimate in service for customers."¹⁰

4.8 In the fast food industry delivery is the main role which has been impacted by change with the introduction of the Gig Economy. Many fast food operators rely on providers like Uber Eats, Deliveroo or Menulog to deliver online orders to customers to their door. Whilst for some businesses this is a new offering for others this is gig work replacing a position previously held by an employee.

4.9 In a similar move to Woolworths, Dominos have a team dedicated to technological developments in their business with work being done on initiatives including drone deliveries and driverless delivery¹¹.

4.10 As with all industries, retail continues to increasingly use data and algorithms both in relation to customers and tailoring aspects of the customer experience to better suit their needs but also to monitor and increase productivity of workers.

4.11 One way in which this has developed significantly in recent years is the roster engineering. A number of major retailers gather data on time taken to perform particular duties and input this data along with data on foot traffic into systems which then produce the 'ideal' roster. Whilst this makes sense logically as a means to increase productivity, the SDA is concerned about the failure to account for the unpredictable factors of human nature and have seen an increasing level of workplace stress/fatigue in our membership.

4.128 The increase in automation and digital technologies represents a need for alternative, decent, secure and safe jobs for a number of retail workers as discussed by Professor Richard Holden in his article for the Conversation.¹²

¹⁰ Chanthadavong A 'Amazon to build its first robotic and largest fulfilment centre in Australia' ZD Net 30 June 2020 <https://www.zdnet.com/article/amazon-to-build-its-first-robotic-and-largest-fulfilment-centre-in-australia/>

¹¹ <https://dom.dominos.com.au/>

¹² Holden R 'Vital Signs: the end of the checkout signals a dire future for those without the right skills' The Conversation 17 Jan 2020 <https://theconversation.com/vital-signs-the-end-of-the-checkout-signals-a-dire-future-for-those-without-the-right-skills-129894>

5. *The Impact of COVID-19*

5.1 Given the significance of impact of COVID-19 on employment and the future of work the SDA submits that the Inquiry must consider the future of work both beyond and within the context of COVID-19.

5.2 The industry we represent has simultaneously seen both sides of the impact of COVID-19. For many workers in the retail industry this has been the busiest period of their working life, working on the front line in difficult and risky conditions.

5.3 For the other parts of the industry it has meant a time of steep decline in working hours and uncertainty about job security. The severity of this has been significantly reduced by the introduction of JobKeeper. However, given this will be decreasing from end of September and eventually phased out and that we are now in a recession we hold great concerns for the future implications of COVID-19 on the retail sector. The impact has already begun to be felt with the announcement by Mosaic of the closure of up to 500 stores in the next 24 months¹³. It is noted that this is a business which predominantly employs older female sales assistants and operates many stores in regional areas.

5.4 The SDA is concerned about the impact of COVID-19 on women as a result of, what has been labelled, the 'Pink Recession'. The SDA has produced a paper titled 'A Pink Recession...so why the Blue Recovery Plan: COVID-19 Impact on Women' which is included as Annexure A.

5.5 The SDA is concerned about the safety of retail and fast food workers working on the frontlines during a pandemic and has developed 10 point safety plans suitable to different sectors of the industry including supermarkets, fast food and shopping centres¹⁴. The general 10 point plan has been included as Annexure B.5.6 The SDA submits that there should be provision of special paid leave for all workers if they are required to self-isolate – whether they are a full-time, part-time, casual or contract worker. This should be introduced now, regardless of the numbers of cases in each state. The earlier it is introduced the lower the cost and more effective paid leave will be in preventing an outbreak.

¹³ <https://www.asx.com.au/asxpdf/20200826/pdf/44lxvnm80zql9.pdf>

¹⁴ <https://national.sda.com.au/coronavirus/>

Recommendation 1 That the NSW Government adopt the 10 points outlined in the SDA's Gender Impact Paper at Annexure A namely:

1. Gender analysis at the design stage as to the impact of policy decisions and interventions
2. Gender impact statement in the State budgets
3. Women at the table on all decision-making bodies and institutions
4. Ensuring that tax and social security measures do not continue to disadvantage women
5. A public policy response to ensure investment in modern work and workplaces
6. Economic investment (both public and private) and job creation which targets the whole economy and particularly the female dominated industries such retail and the care sector (health, education, childcare, aged care, disability care), hospitality and tourism.
7. Industrial Relations framework which addresses the issues for working women including the historical undervaluation of work, pay equity, flexible work and discrimination
8. Proactively address the gender retirement gap – super on every dollar for every worker
9. Flexible work rights
10. Access to training and skills development

Recommendation 2 That the NSW Government endorse the SDA's 10 point safety plans and encourage all shopping centres and retail and fast food employers in NSW to adopt these safety measures.

Recommendation 3 That the NSW Government work with the Federal Government to introduce Paid Pandemic Leave for all workers.

6. Workplace Laws and Instruments

6.1 The SDA is not opposed to technological change or measures to improve productivity but we do strongly demand that changes must be accompanied by a fair distribution of the benefits. Any gains made must be reinvested in ways which ensure that workers benefit from the change and that they are able to find dignity in secure, decent, fairly paid and safe jobs that provide full employment.

6.2 We note that in our industry there is a considerable rate of casualisation and part time work. There are many who seek out the retail industry for suitable part time work for example students and parents. It is imperative that part time work remain a feature of this industry but that this is genuine, secure part time work which provides a predictable pattern of work and a suitable base quantum of hours as meets the needs of the business and the employee.

6.3 Productivity in Australia has experienced a consistent incline over the last 30 years¹⁵ and is projected to continue to increase. Technology has and will continue to be used to drive productivity growth. Despite this, wages growth is low and stagnating, living standards are declining and inequality is growing. Employees must be given a fair share of these gains in the form of decent wages.

6.4 Wage growth is also key driver of economic growth because it drives spending. This is a significant factor in the retail industry which relies on a healthy level of spending to perform well. This has been identified by Philip Lowe on multiple occasions including his Address to the Armidale Business Chamber¹⁶. In this speech he also noted that ‘...the ongoing caps on wage increases in the public sector...’ was also a factor in the stall on wage growth and this year we have seen a freeze on wage increases in NSW. The SDA submits that this decision does not help the NSW economy but rather hinders it and calls for this decision to be immediately reversed.

6.5 Workplace laws in Australia are focused on providing flexibility for business. This has resulted in high levels of casualisation and other forms of insecure work and lead to a significantly high rate of underemployment. The Covid-19 pandemic will only exacerbate these problems.

6.6 The introduction of the Gig Economy and increase in automation of work has and will continue to lead to underemployment, increased casualisation and workers working multiple jobs to make up a suitable income. The traditional concept of someone staying with the same employer for a lengthy period of time is disappearing. Workers should be able to pool their entitlements including leave and superannuation and take them with them as they move jobs.

6.7 There has been an increase in categorising an employee as a contractor or self-employed as a means of avoiding provision of entitlements attributable to an employee, such as minimum rates of pay, annual leave and sick leave. In addition, these workers have the responsibility of managing their own tax arrangements, workers compensation insurance, safety and superannuation, matters that in an employment relationship, would be the responsibility of the employer.

6.8 Minimum employment standards must apply to all workers, regardless of their status as independent contractor. These minimum standards must include the minimum wage, workers compensation, paid sick leave and the right to collectively bargain.

¹⁵ **Australia Productivity**1968-2019 Data Trading Economics
<https://tradingeconomics.com/australia/productivity>

¹⁶ Armidale – 24 September 2019 <https://www.rba.gov.au/speeches/2019/sp-gov-2019-09-24.html>

6.9 All workers must have the right not to be forced into self-employment to their disadvantage. Competition laws can create a barrier to independent contractors working collectively through unions to improve their working conditions. Changes should also be introduced to give contractors the right to bargain collectively and be covered by enterprise agreements. 6.10 The introduction of these new ways of working means new health and safety risks. There should be a review applicable legislation in light of the potential risks associated with these forms of work. This includes reviewing the definitions of “person conducting a business or undertaking” and “worker” in the *Work Health and Safety Act 2011* (NSW) to ensure workers in the gig economy are protected by health and safety laws.

Recommendation 5 That the NSW Government work with Federal Government to strengthen and expand consultation mechanisms with workers to sufficiently incorporate technological change and require more than mere consideration of worker views on any proposed changes. Consultation must include training and education to provide workers with the skills required by new technology. Where new technology leads to job displacement the amount of redundancy payable should be significantly increased and also include an allowance for retraining/education.

Recommendation 6 That the NSW Government immediately pay the 2.5% wage rise to public sector employees.

Recommendation 7 That the NSW Government remove the public sector wage cap.

Recommendation 8 That the NSW Government review all applicable NSW legislation including the Long Service Leave Act 1955 (NSW) to introduce portable entitlements.

Recommendation 9 That the NSW Government implement a set of minimum standards for independent contractors including the minimum wage, workers compensation, paid sick leave and the right to collectively bargain.

Recommendation 10 That the NSW Government dedicate resources in Safework NSW to considering the differing health and safety risks associating with gig economy work and increased automation. This should include a considered review of the risk of workload stress.

Recommendation 11 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* (NSW).

7. Skills and Education

7.1 The SDA Union NSW branch surveyed members about what areas they are considering studying. Nearly 20% of respondents are considering their training options. Nearly 20% are seeking leadership and management skills. Over 45% of respondents are seeking skills that would be helpful for a career in retail (Management, Leadership, HR, Business, Finance or IT skills).

7.2 As described at 3.4 a majority of retail workers have not obtained qualifications beyond high school. However, the results of the SDA survey show that many are wanting to obtain further education to improve their career in retail.

7.3 The automation of work will only increase the need for skills and training. As supermarkets require fewer workers as checkout operators for example, those workers will need to be re-skilled in other types of work.

7.4 Many workers in our industries will look to TAFE and VET programs for further education opportunities in their field of work. Funding in these areas has decreased, this must change urgently to ensure good quality education at an affordable cost is made available to workers to enable them to reskill or upskill as the nature of work changes.

7.5 Training programs must also be flexible enough to adapt to the uncertain changes in work that automation will bring. A training fund for individual employees, with contributions made by employers, similar to a superannuation fund, could provide flexibility and significant benefits to the economy and is an idea worthy of further analysis.

7.5 In any decisions about funding there must be consideration given to regional NSW and ensuring that training is accessible and applicable to workers in the regions.

7.6 In developing suitable units and training courses for upskilling or reskilling workers the Government should adopt a tripartite approach to ensure that employers and unions drive the decision making process and that training that is directly relevant to providing ongoing employment is prioritised. It is noted that given the current environment the SDA strongly recommends the fast tracking of training in infection control; managing customer abuse and violence; and digitisation/online retailing skills.

7.7 We submit there should be an increase in management training to better skill existing employees in these roles and provide increased opportunities for those looking to progress in their industry.

7.8 The SDA also submits that employers have a role to play in ensuring that their employees continue to be able to be engaged in full employment by providing access to training during any period of transition. Employers should provide opportunities for their employees to reskill in preference to making employees redundant. Alternatively, where redundancy is the only appropriate option employers should provide a longer redundancy period to enable sufficient time to train and job search.

7.9 Any training that is developed and delivered must consist of transferrable and comprehensive baseline qualifications that are embedded in industry experience.

Recommendation 12 That the NSW Government immediately increase funding to Tafe and VET programs.

Recommendation 13 That the NSW Government consider ways to fund Tafe and VET programs that makes them accessible and applicable to regional NSW.

Recommendation 14 That the NSW Government continue to facilitate and industry (employers and unions) driven approach to training development.

Recommendation 15 That the NSW Government provide funding and review any means by which it can support the training of employees in industries facing job losses/redundancy whilst employees remain employed to enable a direct transition into ongoing full employment. Any funding or support should be tied to a requirement for employers to continue to employ workers whilst training occurs or to provide a longer redundancy period. Funding and support should also incentivise employers to provide this to regional NSW and consider ways in which ongoing employment in the regions can be supported by business.

Recommendation 16 That the NSW Government consider the implementation of training funds for individual workers, with contributions made by employers, similar to a superannuation fund.

8. Tax and Compensation Schemes

8.1 All workers must receive the protection of the workers compensation scheme.

8.2 The workers compensation scheme must sufficiently support workers to enable them to recover at work. Workers should not be 'kicked off' the system where they are unable to fully return to work as a result of injury in their workplace.

8.3 During COVID-19 frontline retail and fast food workers upon which all Australians have relied on during this crisis have continued working without any government assistance. These workers typically fall into lower income categories earning under the Australian median annual wage of \$48,360 a year before tax.

8.4 The SDA submits that the Government should lift the tax free threshold for frontline workers to \$25000 and pay a stimulus payment for workers earning under the tax free threshold as proposed and outlined in the McKell Institute's June 2020 Paper¹⁷

Recommendation 17 That the NSW Government amend workers compensation legislation to encompass all forms of work.

Recommendation 18 That the NSW Government conduct a review of the workers compensation scheme in NSW to reintroduce coverage for journey to and from work; to remove the cut off point for coverage (s39 of the *Workers Compensation Act 1987 (NSW)*); and to ensure that the scheme is genuinely designed to insure the worker for injury sustained at work and the ongoing impact of that injury.

Recommendation 19 That the Government should lift the tax free threshold for frontline workers to \$25000 and pay a stimulus payment for workers earning under the tax free threshold of \$1,500 as proposed and outlined in the McKell Institute's June 2020 Paper

¹⁷ The McKell Institute Discussion Paper A COVID-19 Tax Rebate for Frontline Workers June, 2020
<https://mckellinstitute.org.au/app/uploads/McKell-Frontline-Rebate-June-2020.pdf>

9. Data and Surveillance

9.1 Workers must have a place in the decisions about collection and ownership of their data. They must have the right to access, influence, edit and delete inaccurate data that is collected from or about them.

9.2 The increased use of data to improve worker productivity has also led to an increase in workload stress in workers who are working to tight margins being asked to work to maximum capacity all day everyday. In safety surveys conducted by the SDA Union of our membership in 2015 and 2016 workload stress was the number one safety issue identified by our membership with over 50% of respondents identifying it as a concern.

9.3 The use of data, including wearable surveillance, to either push workers to unsustainable work rates or to use a workers data to replace them with automation are both reprehensible and unconscionable. The issue of using a workers data to replace them with automation without proper consent to the use of their data is of particular concern in the areas of logistics, warehousing and online retail fulfilment.

9.4 Any form of workplace monitoring must be conducted by consent. This should be informed consent in which the nature, purpose and breadth of the monitoring is made clear to the worker in seeking their consent. Workers must not be coerced or forced to consent to such monitoring.

9.5 Surveillance and data collection that has been consented to must be limited to the workplace and/or workplace related data. It is of concern that ‘...the boundaries of what constitutes a workplace are becoming increasingly porous, especially as digital devices and technologies mediate much of our work content and communications both remotely and on a job site.’¹⁸

9.6 The SDA also notes concerns about existing forms of surveillance namely CCTV surveillance and the gradual introduction of audio capturing by these devices. We wrote to the Hon. Adam Searle, MLC Shadow Minister for Industrial Relations outlining our concerns and this is included as Annexure C.

9.7 The point made in 9.4 is particularly relevant in retail and fast food workplaces where we are seeing the increasing use of social media or tools which replicate social media as a means of communicating with workers. Workers frequently report the use of WhatsApp or Facebook Messenger as means by which managers request completion of tasks or communicate shift coverage needs often in workplaces dominated by young workers.

9.8 This creates multiple issues for consideration including the creeping of the workplace into personal life as communication via these platforms frequently occurs when workers are not on the clock. To what extent is it reasonable to expect a worker to respond to, provide information, chase up other workers outside of work hours?

9.9 It also creates a blurring of what constitutes work and personal life and therefore blurring the lines of appropriate, professional interactions between employees. This opens workers up to greater

¹⁸ Alex Rosenblat, Tamara Kneese, and danah boyd ‘Workplace Surveillance’ Data & Society Working Paper, October 8, 2014 <https://datasociety.net/wp-content/uploads/2014/10/WorkplaceSurveillance.pdf> p2

risk of harassment and can also open workplaces up to inappropriate behaviour moving into the workplace.

9.10 The blurring of work and personal life and it's interaction with surveillance can also take a sinister turn where the surveillance extends to the legitimate industrial activity of workers. A disturbing report from the United States recently highlighted that Amazon was advertising for roles of "Intelligence Analysts" whose role was to monitor and report on any activity around the world on any worker organising activity.¹⁹ Workers are entitled to participate in legal industrial activity free from surveillance. This behaviour, which would be illegal in Australia should not be permitted because the monitoring is happening in another jurisdiction. Workplace surveillance laws must be updated to prohibit monitoring of lawful industrial activity, to account for new technologies and where necessary to permit the extra jurisdictional operation of such laws.

9.9 We have also seen an increase in the collection of medical data whether in the form of doctors certificates; requests for detailed and extensive information about restrictions caused by injury or health problems; drug testing; and now technology and data is being used to ensure workplaces are safe during a pandemic for example cameras which capture the temperature of employees as they enter the workplace²⁰.

9.10 There are instances where this information is relevant to the workplace however there must be clear guidance for employers and employees about the collection of this information.

9.11

Recommendation 20 That the NSW Government review and amend legislation including the *Workplace Surveillance Act 2005* (NSW) to enshrine the right of workers to access, influence, edit and delete data.

Recommendation 21 That the NSW Government review and amend legislation including the *Workplace Surveillance Act 2005* (NSW) to ensure that no form of surveillance or data collection is conducted except by consent of the worker and that this is informed consent.

Recommendation 22 That the NSW Government review and amend legislation including the *Workplace Surveillance Act 2005* (NSW) to ensure workplace surveillance laws are updated to prohibit monitoring of lawful industrial activity, to account for new technologies and where necessary to permit the extra jurisdictional operation of such laws.

¹⁹Amazon deletes job listings detailing effort to monitor 'labor organizing threats' - The Verge

<https://www.theverge.com/2020/9/1/21417401/amazon-job-listing-delete-labor-organizing-threat-union>

²⁰<https://www.smh.com.au/national/thermal-cameras-to-spot-covid-19-are-everywhere-they-are-far-from-perfect-20200703-p558u1.html>

Recommendation 23 That there be development of guidance material in relation to use of social media in workplaces in consultation with unions and employers

Recommendation 24 That there be development of guidance material in relation to the collection or request of a worker(s) medical information.

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Annexure A

A Pink Recession... so why the Blue Recovery Plan?

COVID19 – IMPACT ON WOMEN

The need for effective and equitable recovery policies and interventions.

Gender Equity doesn't just happen – it must be designed in.

GENDER EQUITY IN AUSTRALIA IN DECLINE

Australia is not performing well when it comes to gender equity. *The World Economic Forum's 2020 Global Gender Index* ranks Australia 44th out of 153 countries. NZ ranks 6th²¹. Australia fails to rank in the top 10 in East Asia and Pacific, sitting below the Philippines and Laos.

Australia has dropped 5 places in 2 years and in 2006 Australia was ranked 15th²².

Australia is ranked number 1 for educational attainment, a ranking which has not changed since 2006. Despite maintaining this ranking over this period, we have seen a worsening in our overall ranking from 15th to 44th and our ranking on labour force participation and female representation in leadership.

The 2018 Global Gender Index Report found that *'Australia (39) records a slight widening of its gender gap on legislators, senior officials and managers as well as some reversal of progress on wage equality, resulting in a slight drop in rank'*²³.

If education is not the issue, the key factors contributing to our worsening gap are most likely structural barriers and discrimination.

Looking closer, Australia ranks 49th on the economic participation gap, which measures wages, employment and workforce participation²⁴. In 2006 Australia was ranked 12th.

Australia has also fallen further behind in representation of women in politics; from 32nd in 2006 to 59th in 2020 and also in health outcomes from 57th in 2006 to 104th in 2020.

²¹ World Economic Forum, *Global Gender Gap Report 2020*, p 9

²² World Economic Forum, *Global Gender Gap Report 2006*, p 9

²³ World Economic Forum, *Global Gender Gap Report 2018*, p 21

²⁴ World Economic Forum, *Global Gender Gap Report 2020*, p 12

[ACOSS's 2018 report](#) shows that in Australia, more women than men live below the poverty line and statistics from the [ABS last December](#), found women were the majority of those receiving long-term Newstart or Youth Allowance and the majority of those [receiving parenting payments](#), making them more vulnerable as poverty and economic vulnerability makes it harder to build capacity to absorb further economic shocks likely during a pandemic²⁵.



In 2016, KPMG released a report *She's Price(d)less: The economics of the gender pay gap*, prepared for the Diversity Council of Australia (DCA) and the WGEA. The report found that *'Despite significant advances in lifting women's participation in the labour force and women's pay across industries, and an increased recognition of the value of diversity in the workplace, the gender pay gap continues to persist.'*²⁶

There are many factors driving the persistent gender pay gap in Australia, but the key one is discrimination. The KPMG report showed that sex discrimination not only continues to be the single largest factor contributing to the gender pay gap, but it is worsening with systemic discrimination

²⁵ Amy Haddad, *COVID-19 is not gender neutral*, Broad agenda 17 March 2020

²⁶ KPMG, *She's Price(d)less: The economics of the Gender Pay Gap*, October 2016, p 2

remaining a persistent feature of the workforce. The proportion of the gender pay gap that is attributable to gender discrimination increased from 35% in 2007 to 38% in 2014.²⁷

The report also found that career and work interruptions are responsible for 21% of the proportion of the gender pay gap which is the largest changing factor increasing from 9% in 2007.²⁸

The next most significant contributing factor in the gender pay gap is industrial and occupational segregation, collectively representing 30% of the gap.²⁹ The report found that the representation of men in particular industries and in occupations continues to have an effect on wages, with earnings in occupations and industries with a larger share of males being higher than wages for female dominated industries and occupations.³⁰

While the report suggests that occupational segregation has decreased slightly, industrial segregation has increased. One reason given for the increase in the gender pay gap resulting from industrial segregation, is the increase in the proportion of males working in traditional male dominated industries which attract higher rates of pay and the simultaneous increase in the proportion of women working in female dominated industries such as health care and social assistance which traditionally attract lower pay.

Gender Equity in our Industrial Relations system

The Fair Work Act 2009 at s.3 does not contain an overarching objective of gender equality. There is currently no framework for the achievement of gender equality in the industrial relations context. The Fair Work Commission should be required to promote gender equality and strengthen minimum employment rights for women in all its functions and powers.

Modern Award Objective

The current Award system is not achieving the outcomes necessary to address the unacceptable and persistent issue of gender inequity in the workforce, including the gender pay gap. Pay equity needs to be an objective of the Fair Work Act and at the forefront when wages are set.

The Modern Award Objective at s134, includes an equal pay principle but there is no gender equity principle which underpins the operation of this section. A broad review of the current Award wage setting system and its impact on the gender pay gap, is necessary to correct the undervaluation of

²⁷ Ibid, p 13

²⁸ Ibid

²⁹ Ibid

³⁰ Ibid, p 13.

work in female-dominated industries. The occupations and industries which have traditionally attracted women were relatively low paid when classifications in Awards were established.

There needs to be a review of the historical gender-based undervaluation which persists in Awards.

Much has changed in female-dominated occupations and industries including the introduction of educational and training requirements which are not reflected in the wages set in Awards. The failure to recognise accredited training and skills development in wage setting in feminised industries results in a persistent gap in the wages in female-dominated industries and occupations compared to male-dominated occupations and industries where wages are set at higher rates.

The mechanisms which are currently provided in the Fair Work Act 2009 (FWA) to remedy pay inequity are not working to close the gender pay gap. Significant changes to the FWA are required to achieve positive equal remuneration outcomes.

COVID-19 EMPLOYMENT IMPACTS

Exposure to the virus

Women are more vulnerable to COVID-19 due to their economic insecurity, over representation in certain sectors of the economy, their caring responsibilities, and the feminisation of the education and healthcare sectors. As women have a higher representation in roles such as health care, retail, child-care and education – more women have been exposed to the virus as a result of their work.

Healthcare workers are predominately female so the burden of risk is highest on women in those sectors. Women make up 80% of hospital workers, 83.9% of the general medical practice workforce, including the professionals, and clerical and administration staff. 77% of pathology and diagnostic imaging workforce are women, and women make up 81.8% of residential aged care workers.³¹

Therefore, the risk and the work involved in responding to this crisis is a female one. It has also created a tension between the need to ensure the health workforce is at peak capacity and the considerations around school closures because caring for kids and caring for the community comes back to women.

³¹ *ibid*

Other health implications for women include impacts of COVID-19 on pregnancy and reproductive health. While the WHO and others are still unclear on the risks to pregnant women and their unborn child, it has raised concern and anxiety for pregnant workers and the need for additional protections for those workers.

Pregnancy and COVID-19

The Australian Health Protection Principal Committee (AHPPC) which is advising the Federal Government considers that, based on the limited current evidence, the following people are, or are likely to be, at higher risk of serious illness if they are infected with the virus:

- Aboriginal and Torres Strait Islander people 50 years and older with one or more chronic medical conditions
- People 65 years and older with chronic medical conditions. 5 Conditions included in the definition of 'chronic medical conditions' will be refined as more evidence emerges. The most current list can be accessed on the Department of Health [website](#)
- People 70 years and older
- People with compromised immune systems (see Department of Health [website](#))

Pregnant women are not included in the AHPPC list of high-risk workers at this stage, but we believe they should be included, and risk assessments should be conducted for pregnant employees.

The WHO advice is that although there has not yet been enough research done on the risks for pregnant workers, they are generally considered to be more immuno-compromised than other workers.

The Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG) believes that pregnant women should be considered a vulnerable group.

The UK government has recently updated their advice in relation to pregnant employees and decided that they should be included in the vulnerable workers group and that employers should be conducting risk assessments. Their [advice](#) relates to health workers, but they say this could be applied to other workers who may be at risk:

There is as yet no robust evidence that pregnant women are more likely to become infected than other healthy individuals, however, it is known from other respiratory infections that pregnant woman who contract significant respiratory infections in the third trimester (after 28 weeks) are more likely to become seriously unwell. This may also lead to preterm birth of their baby if they need to recover through improving the efficiency of her breathing or ventilation.

Given these additional considerations for pregnant women who become seriously unwell in the later stages of pregnancy, the Government has taken the precautionary approach to include pregnant women in a vulnerable group.

Currently, there is no evidence to suggest that COVID-19 causes problems with a baby's development or causes miscarriage. With regard to vertical transmission (transmission from woman to baby antenatally or intrapartum), emerging evidence now suggests that vertical transmission is probable. There have been case reports in which this appears likely, but reassuringly the babies were discharged from hospital and are well.

Increased exposure to workplace violence during COVID-19

Workers in the retail sector are exposed to extremely high levels of abuse and violence from customers and the evidence shows that women are at greatest risk.

A SDA survey of over 6000 workers in 2016 found;

- **Verbal abuse** – 89.91% of females experienced verbal abuse compared with 82.35% of males
- **Sexual harassment** - 13.56% of females who experienced customer violence or abuse in the last 12 months said it was of a sexual nature compared with 4.87% of males
- **Physical abuse** – this was experienced more by men, 15.79% of males indicated they had been a victim of physical violence compared with 13.98% of females

Over the past few months, the COVID-19 pandemic has provided a very hostile environment in retail and fast food and increased the prevalence and severity of abuse and violence. This was particularly heightened in the period of panic buying, followed by low stock levels, purchase limits, customer limits and changes to service required to implement the COVID-19 health measures.

Retail workers have also experienced deliberate actions such as being spat at and coughed on by customers claiming to have the COVID virus, prompting the union to ask state governments to extend fines to individuals who spit or cough on retail workers.

This type of violence is also being experienced by workers in other sectors such as the health sector, which is also female dominated.

In a **recent survey of more than 500 members** in the SDA WA Branch survey, 76% of respondents said customer behaviour got worse since the pandemic began. It also found that **22% of retail workers had been deliberately spat on or coughed on during the pandemic.**

Retail trade losses are greater in areas dominated by women

The gender breakdown across retail is varied. Data from the Workplace Gender Equality Agency shows women make up 57.7% of retail workers. But they make up the majority of retail workers in fashion (84.2%), department stores (66.1%) and furnishings and homewares (71.3%) – all sectors of retail hardest hit by COVID-19 and experiencing more closures and reductions in trade.

Supermarkets have a much more even gender breakdown but fashion and department stores have a much higher proportion of female workers. For example, from last year's WGEA reports;

- Coles: Females sales assistants make up 57%, males 43%
- Myer: Females 82%, males 18%
- Just Group: 93% females, males 7%

Even within industries, such as retail, which is female dominated, the impact across the sector for women is even worse than we would assume. The gendered impact is worse within retail. Parts of the sector, such as supermarkets, technology sales and hardware remained open and indeed traded strongly, whereas other parts, particularly fashion retailing which has a higher proportion of female workers have a more even gender breakdown of employees and the part of the sector which closed employ many more women than men.

Casual and insecure work

There are more women than men [working in casual employment](#) without sick leave entitlements. Women are also over-represented in the industries both heavily reliant on casual workers and likely to be hit hard by the restrictions, closure of businesses and economic downturn. The Retail industry employs a significant number of casual workers.

This crisis has magnified the industrial and social issues that already disproportionately impact women in insecure work as they are more vulnerable to losing employment, financial insecurity, domestic violence and homelessness.

200,000 Australian women who work in the accommodation, food services, and retail trade sectors alone missed out on the JobKeeper payment due to its design flaws around casual employees.

Job losses across the economy

In April, more women lost their jobs and more women were impacted by a reduction in hours:

- 350,000 women became unemployed compared to 270,000 men (5.3% of employed women have lost their jobs compared to 3.9% of men)
- Payroll jobs for females went backwards 8% compared to 6.3% for males from the middle of March to the end of May
- 11.5% of women suffered a reduction in hours compared to 7.5% of men
- Job keeper – failure to include casuals
- Women are twice as likely as men to be on zero-hour contracts
- Unemployment figures significantly underestimate the job losses

Data released on 5 May 2020 by the ABS shows that the accommodation and food sector has been most impacted, with about one third of jobs in the sector lost between mid-March and mid-April 2020. This was followed by the arts and recreation services sector with a decrease of 27% in employee jobs. Across sectors, jobs decreased by 7.5% and wages decreased by 8.2% between mid-March and mid-April 2020.[57] Over this same period, jobs held by women saw a larger decrease than jobs held by men, while wages paid to men decreased more. Jobs held by women decreased by 8.1% and wages paid to women decreased by 7.0%; whereas, jobs held by men decreased by 6.2% and men's wages decreased by 8.9%.[58] 32

There is also some evidence to suggest that women-led small and medium enterprises may be more impacted during COVID-19. This is because women-owned businesses are generally operating with less capital and relying more on self-financing.³³

Decline in incomes and financial insecurity have ongoing effects for household members.[61] Loss or reduction of women's incomes affects families because women often invest their earnings into the household.[62]³⁴

Increased risk of family and domestic violence

Increased time at home due to social distancing and isolation measures is placing women at greater risk of family violence. The economic pressures created by the pandemic and restrictions has also increased the risk and will continue to do so well beyond the end of the pandemic as those

³² Workplace Gender Equality Agency, *Gendered Impacts of COVID-19*, May 2020

³³ *ibid*

³⁴ *ibid*

economic consequences persist. *'In April the United Nations raised the alarm over what it called "the shadow pandemic": a marked increase in violence against women during the COVID-19 lockdowns taking place across the globe*³⁵.

The increase in domestic violence also comes at a time when access to services are impacted by restrictions.

Almost 60 percent of the 166 support practitioners surveyed in Victoria by Monash University said the COVID-19 pandemic had increased the frequency of violence, half of respondents said the severity of violence had increased, the number of first-time family violence reports had gone up 42 per cent, and practitioners themselves were struggling working from home, which was "wreaking havoc" on their boundaries and mental health³⁶.

A recent survey by the Centre for Women in Queensland indicated that frontline domestic violence workers had seen a 20 per cent increase in family violence incidents related to COVID-19 financial stress and a near 40 per cent increase in the levels of violence and severity³⁷.

The Workplace Gender Equality Agency has reported that *'Women's Safety NSW is seeing the impact of COVID-19 through an increase in violence, an increase in the number of clients and an increase in the complexity of cases, among other issues, and data from Google shows a 75% increase in searches about family and domestic violence. There is concern that victims of domestic violence may not receive much-needed support during COVID-19 with essential services disrupted, and individuals unable to make calls to helplines while in the same space as an abusive partner.'*³⁸

While additional funding has been provided to the family violence sector at both federal and state levels, this may not be enough to meet the demands that existed prior to COVID-19, let alone the significant increases since the emergence of the pandemic. Comprehensive funding and resourcing to prevent and respond to family violence will be critical over the coming years.

The Federal government has not provided any additional funding to assist those experiencing family and domestic violence or provided additional funding to emergency accommodation services.

³⁵ Editorial, The Sydney Morning Herald, *How to stop the shadow pandemic of domestic violence*, 10 June 2020

³⁶ *ibid*

³⁷ Baz Ruddick, ABC News, *Domestic violence removalist says coronavirus isolation has increased workload by 60 per cent*, 5 May 2020

³⁸ Workplace Gender Equality Agency, *Gendered Impacts of COVID-19*, May 2020, https://www.wgea.gov.au/sites/default/files/documents/Gendered%20impacts%20of%20COVID19_0.pdf

Lockdown restrictions have left millions of girls, women, and people of all genders vulnerable to a growing [shadow pandemic](#) of violence — including [cyberviolence](#) and exploitative grooming of children — and with limited access to help. For these people, technology can be a lifesaving line of defense, whether via instant messaging services with a geolocation function, free calls to domestic abuse hotlines, or discreet apps that provide disguised support and information to survivors in case of surveillance by abusers.

The Digital Gender Divide - Access to technology

Women, girls, and marginalized groups are the least likely to have access to technology, and COVID has highlighted this lack of connectivity.

The internet has evolved from being a luxury asset to a key utility and public good, yet [3.6 billion people](#) remain offline. Digital disparities reflect the inequality and discrimination that exist in wider society, with access lowest for the least privileged.

In low- and middle-income countries, [433 million women](#) are unconnected and [165 million fewer women](#) own a mobile phone compared with men. Boys are [1.5 times more likely](#) to own a phone than girls in many countries, and among those who do own phones, boys are more likely than girls to own smartphones. The global internet user gap is [17%](#), and the digital gender gap exists in all regions of the world — and continues to grow.

Online commerce and [mobile money](#) is now a growing phenomenon, with over 1 billion registered accounts and close to \$2 billion in daily transactions. Digital products are reaching the screens of increasing numbers of low-income users, including young people. Yet 1.7 billion people, [more than half of whom are women](#), remain financially excluded from the digital economy. This can mean that essential cash transfer programs do not reach women in times of crisis.³⁹

Several key Australian government policy initiatives, announced in response to COVID, relied on the use of, and access to, technology such as the transition of school students to home learning and the use of the ATO to access online support systems.

39

UN Women. 'We cannot allow COVID-19 to reinforce the digital gender divide.' *UN Women Executive Director Phumzile Mlambo-Ngcuka and Plan international CEO Anne-Birgitte Albrechtsen*. Online. Wednesday, May 6, 2020

Online learning of students highlighted the technological divide. Professor Natalie Brown, Director of the Peter Underwood Centre at the University of Tasmania, was the lead author on a paper that found 46 per cent of all children could suffer.

"We're seeing an increase in families that are struggling in terms of being able to cover the basic needs — food and shelter and pay rent and all of those kinds of things, so that covers quite a number of young Australians," Professor Brown told the ABC.

Professor Brown said that while the initial research focussed on traditionally vulnerable students, the cohort had expanded because of rapid job losses and limited home internet access — circumstances exacerbated by the rush to remote learning.

"[It includes] all of the complexities of being at home — so some people not having a home, some people in economic disadvantage at home, others trying to balance work, multiple children," Professor Brown said.

But for those without access to devices such as phones and tablets and quality internet access the disadvantage experienced is significant

Policy responses to the economic crisis and their impact on women

The research into the impact of financial market crashes, such as Black Monday (US) 1987, the Asian Financial Crisis of 1997 and the GFC in 2007, shows that existing inequalities are only exacerbated by an economic crisis.

The impact of an economic crisis is most acutely felt by women at year 3 and is felt for approximately 7 years.

Women's unpaid work is a significant contributor to economic growth yet is not counted or recognised. As a result of COVID-19, mothers are spending an extra hour each day on unpaid housework and four extra hours on childcare.

Fiscal policy has the biggest impact on gender equality outcomes and austerity policy does not achieve job creation or gender equity.

To date, there has been no gender analysis of policy decisions and no discussion about addressing the impact on women.

International research shows that investing in social infrastructure provides a greater return on investment and creates more jobs than investment in the construction sectors. Investment in the 'care' sector creates twice as many jobs as that in construction.

Policy development is still premised on the assumption of the male breadwinner model – which we see playing out with the construction jobs/ shovel ready narrative.

The economic recovery response and 'plan' to date has had, and will continue to have, a disproportionately negative impact on women.

As the economy starts to reopen, we need a strong plan to support an economic recovery from the pandemic. Australia's economy is underpinned by consumption. We need strong consumer spending to support our economic recovery. To support a consumer led recovery people need to have money in their pocket to spend.

Fiscal stimulus should be directed towards the retail industry not only to both support and recognise the valuable contribution of these low paid workers. The government should provide frontline workers with a low-income tax rebate or direct payment up to the value of \$1,500. The estimated fiscal stimulus to the NSW economy from this proposal is between \$1.2bn to \$2.8bn. Proposals to provide a combination of direct payments and/or low income tax rebates to low income earners and frontline workers up to the value of \$1,500 would cost \$3.4bn whilst providing up to \$8.7bn of economic activity (see McKell, *A COVID-19 Tax Rebate for Frontline Workers*)

[Childcare package](#)

Childcare is a key piece of infrastructure and impacts significantly on women's workforce participation.

The introduction of free childcare during the COVID pandemic was a welcome addition to families and children.

Childcare attendance among disadvantaged, vulnerable and Indigenous children increased with this initiative. Richard Weston, chief executive of Aboriginal and Torres Strait Islander children's advocacy body SNAICC, said many Indigenous community services had reported increased enrolment after the abolition of fees, with vulnerable children attending for more hours and some families accessing early learning and care for the first time.

Accessible, affordable quality childcare is an important enabler to women's workforce participation.

The Federal government has chosen to discontinue free childcare. This decision was accompanied by the removal of JobKeeper for those working in the Childcare sector; a sector with a female workforce of 96%.

Superannuation

Current research shows that 90% of women will retire with inadequate retirement savings and that in 2010 one in five women yet to retire had no superannuation at all.⁴⁰

In Australia;

- Women currently retire with 47% less superannuation than men
- Women live five years longer than men on average
- Women only receive 1/3 of the government tax concessions on super (men receive the other 2/3)

Quick stats

- 40% of older single retired women live in poverty and experience economic insecurity in retirement
- 46.9% of the workforce are women
- 44% of women rely on their partners income as the main source of funds for retirement
- 8.5% of women between 65 and 74 still have a mortgage
- The average female salary is \$44,000 (including part-time workers)
- Female graduates earn \$5,000 less than male graduates in the same role
- Women spend on average five hours more per day caring for children than men

Key factors behind the gender super gap

- 43% of women work part-time
- Women working full-time earn 18% less than men
- Women take on average five years out of the workforce to care for children or family members which can cause their super savings to stagnate and begin to fall behind those of men
- The current 9.5% Superannuation Guarantee does not enable most women to accrue sufficient savings for a comfortable retirement

⁴⁰ KPMG, She's Price(d)less: The economics of the Gender Pay Gap, October 2016, p 2

- An estimated 220,000 women miss out on \$125 million of superannuation contributions as they do not meet the requirement to earn \$450 per month (before tax) from one employer (as many women work more than one part-time job)

[Access to Early Release of Superannuation](#)

One of the first policy responses of the government was to amend the 'hardship' provisions to allow access to superannuation prior to the retirement age.

Analysis from AMP, one major superannuation fund, found that 21% of women were withdrawing their starting super balances, compared to 17% of men. Further, Female AMP clients were also withdrawing a larger proportion of their super than men, and were more likely to clear out their entire super savings (14%) compared to their male counterparts (12%). With the average superannuation balance for a woman in her early 40s at just under \$62,000, a withdrawal of the maximum is likely to wipe out the compound interest on their superannuation.

Women's ability to make up for their decreased superannuation through future earnings has also been reduced with 55% of jobs lost in Australia held by women. Female work hours also reduced by 11.5% in April, compared to a 7.5% reduction suffered by male workers⁴.

Women's Legal Service Victoria has also warned that women experiencing family violence almost always experience economic abuse, which could take the form of being forced into accessing their super early by violent partners.

So far, 581,000 women have accessed the superannuation early release scheme.

Superannuation is not a bank account and Superannuation is not social security, yet this policy has made it both. Women have had to fund their own COVID recovery which will have significant impacts on their ability to retire with dignity and security.

[Home Renovations Package](#)

The Government's \$150,000 renovation plan announcement will have little, if any impact on job creation for women. Unlike childcare, this initiative was **not** accompanied by the removal of JobKeeper for those working in the housing and construction sector.

Paid Parental Leave (Flexibility Measures)

The Paid Parental Leave (Flexibility Measures) Amendment Bill introduced by the government earlier this year was passed in the Senate on Thursday 11 June and will become effective for babies born on or after 1 July 2020.

In response to the adverse outcomes for women due to COVID-19, the ALP moved an amendment to the Bill that would have enabled expecting parents who have lost their job or work hours because of coronavirus to continue to meet the work activity test so they can access the Paid Parental Leave scheme, as they had planned. The amendment called on the Government to use the extraordinary regulation making power granted to the Minister for Families and Social Services under the coronavirus laws to prevent families from being excluded because they don't meet the work test due to COVID-19. The Government did not support the amendment.

Unfortunately, this is one of many measures which has had an adverse impact on women. The Government failed to amend eligibility for JobKeeper payments to parents who would, if it weren't for COVID-19, have continued to work prior to the birth of their child and families who are now missing out on paid parental leave and JobKeeper and may also have missed out on JobSeeker payments if they have a partner who has kept their job. The failure to fix this problem will force parents especially mums, back to work, before they and their babies are ready, as they won't get the paid parental leave they were expecting.

In 2005, prior to the introduction of the Government Paid Parental Leave scheme, the SDA surveyed members who had recently had a baby and asked them when they returned to work after the birth of their baby. The responses were;

RTW after birth of baby		Cumulative
1 week	7%	7%
2 weeks	7%	14%
3 weeks	5%	19%
4 weeks	0%	19%
5 weeks	2%	21%
6 weeks	3%	24%
2 months	2%	26%

The government's decision to ignore the impacts of COVID on the Work Activity Test for those who are ineligible for JobKeeper or have lost their job, will mean that women, who miss out on the

government paid parental leave payment will be forced to return to work early. This not only negatively impacts their health, but also the health of their baby.

Industrial Relations Working Groups - Awards

The Federal government review of Awards is limited in scope to only 3 Awards; Retail, Hospitality and Restaurants.

These three industries are characterised by low paid workers, women and young people. These three industries have been acutely impacted by COVID in terms of job losses.

More women are on the minimum Awards than men and will be greatly impacted by cuts in the wages and conditions of employment.

Award Reliance and Gender⁴¹

In 2020, women now make up 61% of award reliant workers.

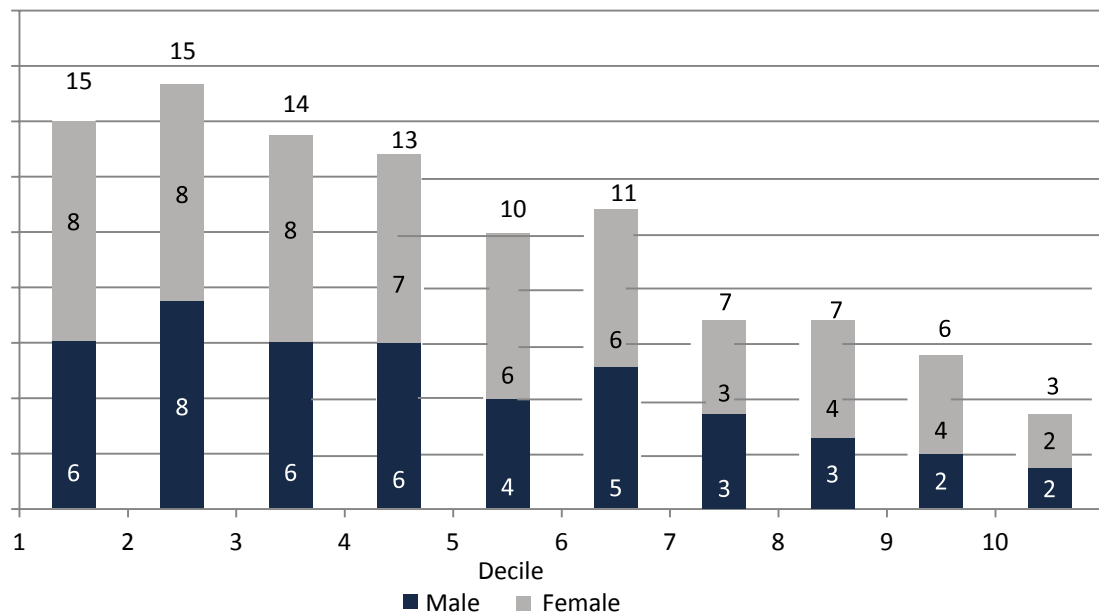
In 2017, the distribution of award-reliant employees by gender across the household income distribution is shown in chart below.

Among this sample, 56 per cent of award-reliant employees were female and 44 per cent were male. The proportion of males and females located across the bottom half of the household income distribution was relatively similar.

At the higher end of the distribution, a relatively higher proportion of females were located across the highest three deciles, however, this comprised less than 10 per cent of all award-reliant employees.

⁴¹ Research Report 1/2017 Award-reliant workers in the household income distribution
Carlos Jimenez and David Rozenbes February 2017

Distribution of award-reliant employees by household income and gender



Note the early comments regarding the Fair Work Act and the Modern Award Objective not requiring gender equitable outcomes when making changes to the award.

COVID-19 RECOVERY – A Pink Recession – so why the Blue Recovery?

The COVID-19 response and recovery provide us with an opportunity to reset our economy and fix some of the inequities and unfairness built into the current structure of our economy and society. The measures being considered and implemented must not exacerbate the existing gender inequalities but instead should aim to ensure a more equal outcome for women.

Research comparing the employment effects of increased public investment in construction with the same investment in the care sector, which includes health, education, childcare, aged care and disability care in seven advanced nations including Australia found that the employment gains from investing 1 per cent of gross domestic product in the care sector would generate more total employment than an identical investment in construction, especially for women, and almost as much employment for men.

In Australia the rise in the employment rate after investing 1 per cent of GDP in the care sector would be nearly twice that of the same investment in the construction sector, including direct, indirect and induced employment.

Women in Australia would gain well over half the new jobs created under the care sector scenario but less than one third of total new jobs generated if the investment was in construction.

The construction sector scenario was shown to widen the existing gender employment gap in favour of men in all seven nations studied. "Investment in construction increases the gender employment gap, while investment in care decreases it," says the study titled *The gendered employment gains of investing in social v physical infrastructure: evidence from simulations across seven OECD countries*.

The researchers also found additional investment in the care sector was much more likely to draw new people into paid employment and, therefore, increase the overall number of workers in the economy. This is not a feature of most physical infrastructure investment, the study notes.

There is overwhelming evidence that investment in health and childcare, especially high-quality childcare, lifts the productive capacity of the economy over time.

The researchers conclude that "social infrastructure investment policies should be considered on an equal basis with physical infrastructure programs" when economic stimulus is required.

Politicians seem to favour spending on building schemes during a downturn because the construction sector is a major employer accounting for about 9 per cent of jobs and has well-resourced, vocal advocates and big projects allow politicians to make grand announcements. But the retail, health care and social services sectors employ far more Australian workers, many of them women. Australia's workforce has been transformed since the last time we had a recession and policies to stimulate the economy need to adapt.

For every million dollars the government spends on education, it would create 10.6 direct jobs for women and 4.3 direct jobs for men. For every million dollars they spend on construction, it would create 0.2 jobs for women and 1 jobs for men.

SDA's 10 Point Plan for Gender Equity in a COVID-19 recovery and beyond

1. Gender analysis at the design stage as to the impact of policy decisions and interventions
2. Gender impact statement in the Federal and State budgets
3. Women at the table on all decision-making bodies and institutions
4. Ensuring that tax and social security measures do not continue to disadvantage women
5. A public policy response to ensure investment in modern work and workplaces
6. Economic investment (both public and private) and job creation which targets the whole economy and particularly the female dominated industries such retail and the care sector (health, education, childcare, aged care, disability care), hospitality and tourism.
7. Industrial Relations framework which addresses the issues for working women including the historical undervaluation of work, pay equity, flexible work and discrimination
8. Proactively address the gender retirement gap – super on every dollar for every worker
9. Flexible work rights
10. Access to training and skills development

Annexure B



COVID-19: SDA 10 Point Health & Safety Plan

SDA calls for ALL retailers to put 10 health & safety measures in place to protect you

Your safety must come first. Your health must not be put at risk during this time.

The SDA is engaging major companies on arrangements being put in place to keep workers safe during the pandemic.

On top of measures already introduced the SDA is calling for retailers to:

1. Promote 'cash free' and accept card payments.
2. Install plexiglass screens at cash registers to protect workers who cannot keep at least 1.5 metres from customers.
3. Ensure social distancing measures are in place and enforced including display of signage, floor markings, register use and the regulation of customer numbers.
4. Ensure hand sanitiser approved by the Health Department is readily available to all staff. (Current standards require at least 60% alcohol content)
5. Provide workers with gloves and personal face shields where requested.
6. Provide bags free of charge for each purchase to avoid handling of customer bags. No use of customers' used bags unless the customer bags it themselves.
7. Continue to increase security to assist in enforcing social distancing, customer volumes, purchase limits, access limits and in dealing with unreasonable customers. Police resources may also need to be deployed to protect workers.
8. Ensure regular cleaning and sanitization of the workplace, including workstations, personal protective equipment and individual vests in self-serve checkout areas.
9. Take a zero-tolerance approach to customer violence and abuse.
10. Publicly promote the SDA's No One Deserve A Serve campaign to improve customer behaviour.

We continue to call on the community to show all retail workers the respect they deserve during this time, there is no excuse for abuse and violence. If you experience an abuse or violence from a customer, report it.

You can also help by sharing our [No One Deserves A Serve Community Service Announcement](#) calling on customers to be patient and respectful.

Keep up to date with information at www.national.sda.com.au/coronavirus.

Annexure C

17 November 2017

The Hon. Adam Searle, MLC
Shadow Minister for Industrial Relations
Parliament House
Macquarie Street
SYDNEY NSW 2000

BY EXPRESS POST

Dear Adam,

WORKPLACE SURVEILLANCE ACT 2005 – RECORDING OF AUDIO

The SDA wishes to bring to your attention a concern raised by a member of the Union around workplace surveillance. This resulted in the SDA looking closely at the issue of workplace surveillance in NSW and at possible shortcomings with the Workplace Surveillance Act, 2005 (“Surveillance Act”) particularly in relation to audio recording through the use of surveillance cameras in the workplace.

The Union seeks your views, as the Shadow Attorney General and Shadow Minister for Industrial Relations, in relation to the issues as raised below.

The Union wants to ensure that employers use surveillance technologies appropriately to protect their workplaces but in so doing respect their employees’ reasonable expectations of privacy.

Background

Recently, the SDA spoke to a member who works at a petrol station in regional NSW. The member told the SDA that their employer had replaced existing surveillance cameras with newer cameras and also expanded its use to cover the stockroom area. The stockroom area had an entry/exit point and also was an area where employees had their breaks. In addition to video recording, the replacement cameras also came with audio recording.

The member expressed concerns that audio recording amounted to an invasion of their privacy in that the private conversations of employees on their breaks would now be recorded. Additionally, they could face the possibility of being disciplined by their manager over private, casual, informal conversations.

The matter has been addressed with the employer, who was not aware that the replacement camera’s came with audio recording. The employer took immediate steps and the camera in the stockroom has been removed but other cameras in public areas and the forecourt area of the petrol station are still operational recording both audio and video.

The Issues

Some issues which arise include:

- Should notice be given and employees consulted when cameras are being installed or its use expanded to include other areas?
- Should employees have some right to privacy over and above the areas where recording is prohibited under the Surveillance Act?
- Should the Surveillance Act be amended that where a “Camera” includes a recording audio capacity the Act contains similar provisions and requirements to the Surveillance Devices Act, 2007 (NSW) (“SD Act”)?
- Does the SD Act apply to cameras with an audio recording capacity?

The Legislation

Workplace Surveillance Act

Section 3, Definitions, of the Surveillance Act defines “camera” as “includes an electronic device capable of monitoring or recording visual images of activities on premises or any other place”. This means that audio recording through use of cameras would arguably not fall within the definition and thereby the legislation.

Section 10 of the Surveillance Act states that notice of surveillance is required at least 14 days before surveillance commences. Relevantly, this requirement would not pick up instances where replacement cameras may be installed or more importantly installed in new areas. No consultation with employees is required prior to installation of cameras or where cameras are being replaced.

Section 15 of the Surveillance Act prohibits the use of any surveillance in any change room, toilet facility or shower or other bathing facility at the workplace. Notably, in this case this would not extend to prohibit the use of camera surveillance in meal rooms or break areas.

Workplace Privacy Act 2011 (ACT)

In the ACT, it is the Workplace Privacy Act 2011 which regulates surveillance in the workplace. It is useful to compare provisions of the Workplace Privacy Act which contain provisions not found in the Surveillance Act and which may go to addressing possible shortcomings with the Surveillance Act:

- Under Section 13(4) of the Workplace Privacy Act notice issued to employees has to state that:
 - (h) that the worker may consult with the employer about the conduct of the surveillance under section 14
- Section 14 talks about the employer consulting employee(s) over the notice period. [14 days]. Consultation must be conducted in good faith where the worker “has a genuine opportunity to influence the conduct of surveillance” – Section 14(2) & (3).

Like provisions could be included in the Surveillance Act and expanded to include consulting employees where “updates to current equipment, new locations etc” are envisaged. This may address issues of the appropriate placement and would have assisted the employer in not installing a camera in the stockroom area based on the employee feedback.

Surveillance Devices Act

In NSW the SD Act (NSW) more broadly regulates the use, installation, records captured through the use of surveillance devices.

Under Section 4, Definitions, a listening device and optical surveillance device fall within the definition of a surveillance device.

Section 7 (1) of the SD Act does prohibit a person from “knowingly install use or cause to be used or maintain a listening device:

- (a) to overhear, record, monitor or listen to a private conversation to which the person is not a party or
- (b) to record a private conversation to which the person is a party.”

However, subsection 7(1) (b) would not apply to the use of a listening device to record a private conversation where

- (3) (a) all of the principle parties consent, expressly or impliedly or
- (b) a principle party to the conversation consents to the listening device being used and the recording of the conversation:
 - (i) is reasonably necessary for the lawful interests of that principle party; or
 - (ii) is not made for the purpose of communication or publishing the conversation or a report of the conversation, to persons who are not parties to the conversation.

Arguably, if any notice is given to employees or consent is sought and given, then cameras recording both audio and video could be placed in lunch and tea rooms or other common areas where employees may congregate to have breaks etc. Alternatively, if employees, having become aware, do not raise an objection, they may have given implied consent.

Lunch and tea rooms are not deemed to be prohibited areas under the Surveillance Act. Therefore, arguably, the recording private conversations of employees on their breaks would not be contrary to either the Surveillance Act or the SD Act.

Please contact myself or Mr Bernard Govind in our Sydney office on 9281 7022 to discuss the issues outlined above.

Yours faithfully,

Bernie Smith

BRANCH SECRETARY-TREASURER