

Submission
No 28

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

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Unions NSW Submission

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

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Unions NSW
Trades Hall
Level 3, 4-10 Goulburn
Street
Sydney
T: 02 9881 5999
F: 02 9261 3505

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Introduction

1. In opening his 1930 essay titled “Economic Possibilities for our Grandchildren”, John Maynard Keynes wrote “We are suffering just now from a bad attack of economic pessimism”¹. Nearly 90 years later this remains relevant and in the face of similar (though perhaps faster-paced) advancements, coupled with the deep and varied impacts of the COVID-19 pandemic, we must be cautious in how we ride the waves of technological change. It is vital New South Wales establishes policy and regulation to fairly distribute the benefit of advancements while maintaining global currency and competitiveness.
2. Unions NSW is the peak body for trade unions and union members in New South Wales with 48 affiliated trade unions and Trades and Labour Councils, representing approximately 600,000 workers across New South Wales. Affiliated trade unions cover the spectrum of the workforce in both the public and private sectors.
3. Technology is an omnipotent and ever-changing tool affecting the way we work and the way we must think about work. From 2020, it is difficult to know what automation and the increasing speed of technological advancement will mean and look like into the future. A 2015 report by the Committee for Economic Development of Australia suggested almost five million Australian jobs were likely to be replaced by computers within 10 to 15 years². It is almost certain that within not so many years, people in our state will be working in jobs and industries we have not even conceived of today.
4. Unions NSW and its affiliate unions have a proud history of engaging in the parliamentary process to protect and represent the interests of working people, their families and communities. Unions NSW frequently makes submissions to inquiries involving industrial relations and other issues which may impact members. We welcome the opportunity to make a submission and commend the Upper House for establishing the Committee to inquire into the impact of technological and other change on the future of work and workers in New South Wales (the **Inquiry**).
5. This submission will discuss the effects of technological change on labour in Australia more broadly and make recommendations relevant to New South Wales. It first assesses the current state of the labour force and examines the requirements of a market emerging from the COVID-19 pandemic. Next, the submission provides the Committee with insight into the Gig Economy and automation, before exploring the need for action to address Education and Training, Taxation and other economic considerations relevant to the future of work. The submission then outlines some of the deficiencies in current workplace surveillance legislation as well as the requirements upon businesses when enacting

¹ John Maynard Keynes, ‘Economic Possibilities for Our Grandchildren’ in *Essays in Persuasion* (Macmillan, 1931). Essay available at <<http://www.econ.yale.edu/smith/econ116a/keynes1.pdf>> 1.

² Committee for the Economic Development of Australia, *Australia’s future workforce?* (2015) 6.

workplace changes. Finally, the submission gives an insight into the experience of migrant workers, who currently constitute 11%³ of the Australian workforce, representing the second largest migrant workforce in the world⁴. The submission includes a series of concerns which we believe must be addressed for this group of workers into the future.

6. The Industrial Revolutions of the nineteenth and twentieth centuries changed the nature of work and saw benefits for many workers including reduced working hours, safer conditions, increased opportunity for education and cheaper goods. The First Industrial Revolution was the dawn of mechanised production, harnessing the power of water and steam. The Second Industrial Revolution brought us mass production through electricity and the Third Industrial Revolution has introduced automation through the rise of information technology.
7. Currently, a Fourth Industrial Revolution is in train and characterised by a blending of technologies which blurs boundaries between the physical, digital and biological elements of labour⁵. Unions NSW is eager for New South Wales to adopt practices and regulations which promote equity and positive outcomes for workers, employers and government. Preparedness for the uncertainty ahead is essential to ensure these changes – irrespective of pace or scale – do not diminish the pay, working conditions and personal wellbeing of workers, their families and communities.
8. Australia, like the rest of the world is in the midst of a colossal event marked by monumental disruption and volatile upheaval⁶ which will fundamentally change our society and economies. Unions NSW believes the current context of the COVID-19 pandemic to be an appropriate opportunity to reimagine the way we work and prepare for future changes.
9. Please note this submission is intended to compliment and not supersede any submission from an affiliate union of Unions NSW.

³ Senate Education and Employment References Committee, *A National Disgrace: The Exploitation of Temporary Work Visa Holders* (2016) 15.

⁴ Organisation for Economic Cooperation and Development, *International Migration Outlook 2019* (online edition, 2019) Chapter 3.

⁵ Klaus Schwab, 'The fourth Industrial Revolution: What It Means and How to Respond', *Foreign Affairs* (online), 12 December 2015, < <https://www.foreignaffairs.com/articles/2015-12-12/fourth-industrial-revolution>>.

⁶ Beatrice Di Caro, 'COVID-19: The Great Reset', *World Economic Forum* (14 July 2020) <<https://www.weforum.org/agenda/2020/07/covid-19-the-great-reset/>>.

Recommendations

In respect of this inquiry, Unions NSW makes the following recommendations:

- (1) NSW Government to review its COVID-19 Recovery plans to ensure the investment strategy for social and physical infrastructure is equitably beneficial and creates jobs for women and young people.
- (2) NSW Government to oppose and lobby the Federal Government to abandon attempts to avoid legislated increases to compulsory superannuation contributions under the *Superannuation Guarantee (Administration) Act 1992* (Cth) and commit to incremental increases contained therein.
- (3) NSW Government to provide payroll tax exemptions to businesses who employ women and young people especially in industries where women are underrepresented.
- (4) NSW Government to lobby the Federal Government to reinstate JobKeeper for the childcare sector.
- (5) NSW Government to extend council childcare centre funding scheme until April 2021 (12 months total) and extend the funding to all qualifying childcare providers in New South Wales for the same period.
- (6) NSW Government to adopt and implement the Shop, Distributive and Allied Employees Association's 10 point plan for Gender Equity.
- (7) NSW Government to lobby Federal Government to provide \$1,500 stimulus payment to all workers earning below the tax-free threshold in the 2020-21 financial year.
- (8) NSW Government to endorse and lobby the Federal Government to increase the tax-free threshold to \$25,000 for all workers in the 2020-21 financial year.
- (9) NSW Government to consider expanding current community-based technology literacy training programs to assist people to use their devices and ensure equitable access to services.
- (10) NSW Government to develop procurement policies that give financial advantage in tender processes to businesses employing workers in New South Wales and/or Australia when providing government with goods or services.
- (11) NSW Government to lobby Federal Government to establish a minimum set of wages and conditions for all workers and especially workers within the Gig Economy.
- (12) Amend section 5 "Meaning of "person conducting a business or undertaking"" and section 7 "Meaning of "worker"" of the *Work Health and Safety Act 2011* (NSW) to explicitly clarify the duty owed to workers in the Gig Economy.
- (13) NSW Government to review SafeWork NSW regulatory requirements on the Work, Health and Safety duties owed to all workers in the Gig Economy by the companies/platforms facilitating this work.
- (14) NSW Government to continue financially supporting the Centre for Workplace Health in its ongoing research into the Work, Health and Safety characteristics of workers and operators in the food delivery sector of the Gig Economy.
- (15) Amend the definition of "worker" in section 4 of the *Workplace Injury Management and Workers Compensation Act 1998* (NSW) to recognise non-traditional workers and extend the obligation on platforms to provide personal injury insurance to all workers using their service.

- (16) NSW Government to expand the coverage of the rights and protections in Chapter 6 of the *Industrial Relations Act 1996* (NSW) to workers in the Gig Economy.
- (17) NSW Government to create/designate an agency responsible for the development of regulation, initiatives and safety provisions for the protection of workers in the Gig Economy.
- (18) NSW Government to establish a tripartite process for developing strategies to manage automation investment and implementation of new technologies to ameliorate the economic and social impacts within New South Wales.
- (19) NSW Government to identify what role it can play in using automation and technology to create more employment opportunities in regional areas.
- (20) NSW Government to incentivise businesses to expand in regional areas by granting a payroll tax rebate.
- (21) NSW Government as best practice employer to incentivise employees to relocate to rural/regional areas to bolster local economies suffering/anticipated to suffer from the growth of automation.
- (22) NSW Government to create and implement a jobs guarantee in collaboration with the Federal Government to ensure work is available for anyone who seeks it, with the government as an employer of last resort.
- (23) NSW Government, as best practice employer, to ban unpaid overtime for public sector employees to assist in redistributing work to create other job opportunities as part of a jobs guarantee.
- (24) Amend *Long Service Leave Act 1955* (NSW) to provide for portable long service leave across all sectors.
- (25) NSW Government to implement a training fund scheme to provide future training and education opportunities.
- (26) NSW Department of Education to strengthen industry partnerships to inform education and training curriculums and adapt learning to the workplace.
- (27) NSW Government to develop a tripartite industry initiative which can identify and assist employers and workers in industries transitioning due to automation and/or new technologies.
- (28) NSW Government to review and increase TAFE and Vocational Education and Training funding and link training to facilitate innovation and transition of workers into and through the new economy.
- (29) NSW Government to support the Federal Government in reviewing and updating approaches to dealing with taxation challenges as a result of the rise of the Gig Economy.
- (30) NSW Government to lobby the Federal Government to review how and if Gig Economy platforms should be responsible for administering tax collection and superannuation contributions from the earnings of workers using their platforms.
- (31) NSW Government to review New South Wales workplace surveillance legislation to:
 - (a) encompass all forms of surveillance technology being used;
 - (b) proscribe the secondary purposes for which surveillance data may be used by employers;
 - (c) outline the circumstances in which surveillance data can be used for disciplinary purposes;
and
 - (d) require proscriptive policies in all workplaces in respect of the form and use of workplace surveillance.

- (32) NSW Government to implement regulation of workplace data, including an obligation for all workplaces to have a policy about the lifecycle of workplace data.
- (33) NSW Government to designate an existing agency to regulate and enforce workplace surveillance and workplace data regulation and legislation to ensure protection of all workers and their interests.
- (34) NSW Government to review the effectiveness of obligations on employers facing workplace changes, based on the framework contained in the *Employment Protection Act 1982* (NSW).
- (35) NSW and Federal Governments to place requirements upon universities and colleges to provide international students with information about their workplace rights and relevant industrial organisations.
- (36) NSW Government to lobby Federal Government to abolish the 88 days' farm work required for Working Holiday Makers to secure their second year visa.
- (37) NSW Government to lobby Federal Government to extend the time a Working Holiday Maker can stay with the same employer from six to 12 months.

Current State of the Labour Force

10. While Australia's federal industrial relations system is undergoing a review with public collaboration between unions and industry groups⁷, the extent to which any changes will bolster the nation's workforce, productivity or a more equitable distribution of the wealth created remains to be seen.
11. The industrial environment in Australia over recent decades has seen increases in productivity and flexibility with the majority of benefits geared towards business. Flexibility has manifested as increasing levels of casualisation, short-term contracts, the use of independent contractors and the use of sham contracting. Unions NSW believes this has resulted in a significant transfer of risk from employers to workers with workers foregoing job security, paid leave, minimum rates of pay, workplace conditions, workplace insurance and experiencing reduced workplace safety.
12. Ambiguity and loopholes in both state and federal legislation have been used to reduce employment standards and conditions. For example, in the Gig Economy workers are engaged as independent contractors in a practice lauded as flexible and progressive. In reality, these workers are often paid well below minimum wage, shoulder liability for their own tax, insurance and safety requirements and miss out on conditions such as paid personal and annual leave enshrined in the National Employment Standards.
13. The industrial landscape has deteriorated during and as a result of the COVID-19 pandemic. As of July 2020, the unemployment rate in New South Wales was 7.2%, having increased 0.3% since the previous month⁸ and national underemployment was 11.2%, up 2.8 points since the same time last year⁹. For the purposes of producing this data, the Australian Bureau of Statistics regards an underemployed person as someone who is not fully employed and is looking for and/or available to work more hours¹⁰.
14. The future of work is more uncertain than ever and New South Wales must be proactive in its response in order to economically recover from the COVID-19 pandemic.

⁷ Sally McManus and Innes Willox, 'Is it fair for a casual employee to have annual leave? What unions and business want from Scott Morrison', *The Guardian* (online), 28 May 2020, <<https://www.theguardian.com/commentisfree/2020/may/28/is-it-fair-for-a-casual-employee-to-have-annual-leave-what-unions-and-business-want-from-scott-morrison>>.

⁸ Australian Bureau of Statistics, *6202.0 – Labour Force, Australia, Jul 2020* (13 August 2020) <[https://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/6202.0Main%20Features2Jul%202020?opendocument&t](https://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/6202.0Main%20Features2Jul%202020?opendocument&tabname=Summary&prodno=6202.0&issue=Jul%202020&num=&view=>)abname=Summary&prodno=6202.0&issue=Jul%202020&num=&view=>, 'Labour Force Commentary July 2020'.

⁹ Ibid, 'July Key Figures'.

¹⁰ Australian Bureau of Statistics, *Underemployed Workers* (30 January 2012) <<https://www.abs.gov.au/ausstats/abs@.nsf/dossbytitle/036166B5C6D48AF2CA256BD00027A857?OpenDocument>>.

Immediate Future – A World Emerging from COVID-19

15. At the time the Committee was formed and tasked with conducting this Inquiry, it was impossible to comprehend the disruption ahead. Unions NSW believes it is imperative for the Committee to consider the short term future and the way this will shape the workforce, in addition to those elements within the terms of reference.

A Pink Recession

16. Women have been disproportionately affected by the social and economic repercussions of the COVID-19 pandemic. Women represent the majority of frontline workers, including 80% of hospital workers¹¹, meaning they have shouldered a greater amount of risk, while also being most likely to lose their jobs¹².
17. In addition to the general propensity of women to perform a greater share of unpaid home labour¹³, the unequal detriment suffered is due, to a significant degree, to the over-representation of women in highly casualised industries. These industries, such as fashion retail and hospitality¹⁴ were among the first to feel the impact of COVID-19, with trading ceasing overnight. Already inherently insecure for workers, these industries are comprised predominately of casual workers who are not entitled to paid leave. In addition, due to the Federal Government's narrow construction of the JobKeeper wage subsidy, many casual workers ineligible for the scheme are women¹⁵.
18. In what has been labelled a "Pink Recession", we know during and because of the COVID-19 pandemic, women in Australia are more likely to:
- (a) lose their job¹⁶;
 - (b) have their working hours reduced¹⁷;

¹¹ Alison Branley, 'Gender equality scorecard shows health and caring jobs not highly valued', *ABC News* (online), 19 November 2019, <<https://www.abc.net.au/news/2019-11-19/gender-pay-gap-why-is-caring-so-undervalued/11713752>>.

¹² Georgia Wilkins, 'Who are Australia's essential workers? Short answer: women', *Crikey* (online), 22 April 2020, <<https://www.crikey.com.au/2020/04/22/who-are-australias-essential-workers-short-answer-women/>>.

¹³ *Ibid.*

¹⁴ Angela Barns, Therese Jefferson and Alison Preston, 'Women's employment in the context of the economic downturn' (Women in Social & Economic Research for the Australian Human Rights Commission, April 2009) 15.

¹⁵ Greg Jericho, 'Jobkeeper has failed, and it's hitting women and young people the hardest', *The Guardian* (online), 21 June 2020, <<https://www.theguardian.com/business/commentisfree/2020/jun/20/jobkeeper-has-failed-and-its-hitting-women-and-young-people-the-hardest>>.

¹⁶ Greg Jericho, 'Despite the horror of Australia's unemployment numbers, we haven't reached the bottom yet', *The Guardian* (online), 17 May 2020, <<https://www.theguardian.com/business/commentisfree/2020/may/17/despite-the-horror-of-australias-unemployment-numbers-we-havent-reached-the-bottom-yet>>; also note: ABS 6160.0.55.001 - *Weekly Payroll Jobs and Wages in Australia, Week ending 30 May 2020* showed payroll jobs worked by women dropped 8.0% since 14 March 2020, compared to 6.3% drop for men.

¹⁷ ABS 6202.0 - *Labour Force, Australia, Jul 2020* showed monthly hours worked by males down 7.8% in April 2020 on the previous month compared to females down by 12% in the same period.

- (c) experience domestic and family violence in what the United Nations has labelled a “shadow pandemic” and (due in part to COVID-related restrictions) have been limited in their ability to access services and assistance¹⁸;
 - (d) not benefit from governmental COVID-19 recovery plans;
 - (e) be exposed to COVID-19 at work; and
 - (f) be excluded from the growing digital economy.
19. Additionally, 2 in 3 women aged 25-31 who responded to the Australian Longitudinal Study of Women’s Health reported financial stress during COVID-19, with a quarter reporting feeling very or extremely stressed¹⁹.

Government Responses to COVID-19

20. The New South Wales economy is consumer-led, meaning our economic recovery is contingent on people spending money and that money recirculating through the economy. For this recovery to effectively occur, citizens must have money and confidence to spend, which can be influenced by government fiscal policy.
21. To date, the NSW Government has been vocal about its intention to recover the New South Wales economy through investing in construction of infrastructure²⁰, though it has been vague about the exact projects it intends to fund (and has re-announced projects under the guise of ‘new’ COVID-19 recovery spending). For example:
- (a) a Coalition election commitment for a \$25 million sports precinct in Orange included in the budget in June 2019²¹ was reaffirmed in July 2020 in the name of recovering from the economic impact of the COVID-19 pandemic²²; and

¹⁸ Monash Gender and Family Violence Prevention Centre, *Gender-based violence and help-seeking behaviours during the COVID-19 pandemic* (accessed 1 August 2020) <<https://www.monash.edu/arts/gender-and-family-violence/research-projects/covid-19-and-gender-based-violence>>.

¹⁹ Australian Longitudinal Study of Women’s Health, *COVID-19 Survey Report 3* (27 May 2020), 2.

²⁰ Alexandra Smith, ‘Roads, water and electricity: Sydney builds its way through COVID-19 crash’, *The Sydney Morning Herald* (online), 9 August 2020, <<https://www.smh.com.au/politics/nsw/roads-water-and-electricity-sydney-builds-its-way-through-covid-19-crash-20200808-p55jv3.html>>.

²¹ Dave Fitzsimons, ‘Green light: \$25 million multi-sports precinct for Orange approved’, *Central Western Daily* (online), 18 June 2019, <<https://www.centralwesterndaily.com.au/story/6223340/25-million-to-build-multi-sports-complex-allocated-in-state-budget-photos/>>.

²² ‘As preliminary work begins, Government re-affirms funding for new sporting precinct’, *Mirage News* (online), 23 July 2020, <<https://www.miragenews.com/as-preliminary-work-begins-government-re-affirms-funding-for-new-sporting-precinct/>>.

- (b) the existing investment in upgrading the Shellharbour Hospital was increased from \$250 million to \$570 million as a part of the NSW Government's COVID-19 recovery plan²³.
22. Noting the data referenced above and the fact women account for less than 3% of construction trades workers in Australia²⁴, the adoption of this recovery plan will naturally provide far greater benefit to men than to women in New South Wales²⁵.
23. Research conducted by The Australia Institute shows spending \$1 million on social infrastructure for education and training creates 10.6 direct jobs for women and 4.3 direct jobs for men. By contrast, spending \$1 million on construction infrastructure creates 0.2 direct jobs for women and 1 direct job for men²⁶. A recent study by The Open University demonstrates government investment in construction widens the gap in gender employment, while investment in care decreases it²⁷. Similarly, whilst physical infrastructure may create new work for people already in the industry, the labour supply is not expanded during its construction. This contrasts with investments in social infrastructure which are more likely to increase total employment²⁸.
24. In times of economic crisis such as the one we are facing due to the COVID-19 pandemic, it is imperative governments are led by the long-term employment stimulus value of investment. Bolstering and expanding the workforce through new social and physical infrastructure will create greater circulation of money through the economy and assist in safeguarding against future major events.

Recommendation: NSW Government to review its COVID-19 Recovery plans to ensure the investment strategy for social and physical infrastructure is equitably beneficial and creates jobs for women and young people.

²³ '\$700 million for Shellharbour Hospital', *Mirage News* (online), 8 September 2020, <<https://www.miragenews.com/700-million-for-shellharbour-hospital/>>.

²⁴ Construction Skills Queensland, *Women in Construction: An opportunity lost?* (2018) 4.

²⁵ Nick Bonyhady, 'Blue collar jobs not enough to fix 'pink recession', Sally McManus says', *The Sydney Morning Herald* (online), 16 June 2020, <<https://www.smh.com.au/politics/federal/blue-collar-jobs-not-enough-to-fix-pink-recession-sally-mcmanus-says-20200616-p552zu.html>>.

²⁶ David Richardson and Richard Denniss, 'Gender experiences during the COVID-19 lockdown: Women lose from COVID-19, men to gain from stimulus' (Research Paper, The Australia Institute, June 2008) 9.

²⁷ Jerome De Henau and Susan Himmelweit, 'The gendered employment gains of investing in social vs. physical infrastructure: evidence from simulations across seven OECD countries' (IKD Working Paper No. 84, The Open University, April 2020) 7.

²⁸ *Ibid* 9.

Superannuation

25. In addition to exclusion from government recovery plans, the pre-existing gender superannuation gap has been widened by the COVID-19 pandemic²⁹. Before the commencement of the pandemic, women were found to retire with 47% less super than men³⁰ and during the pandemic this has been exacerbated by women being more likely to take advantage of the ability to access their superannuation early. Superannuation fund HESTA reported 78.5% of members who had withdrawn super under the early access scheme were women³¹. AMP reported 21% of female members compared with 17% of male members withdrew from the fund, with women also more likely than men to clear out their entire balance³². Upon the release of initial data about early access in May, Federal Treasury admitted they had not conducted a gender analysis of the impact of the scheme³³.
26. The reduction in women's superannuation account balances will be further compounded by the difficulties many will have returning to their pre-pandemic employment. This will see a significantly higher than anticipated reliance on social security and government-funded pensions over the longer term. The NSW Government should lobby the Federal Government to implement policy to redress the superannuation imbalance; specifically to enable women to retire with appropriate and liveable funds by committing to the legislated increases to compulsory superannuation contributions.

Recommendation: NSW Government to oppose and lobby the Federal Government to abandon attempts to avoid legislated increases to compulsory superannuation contributions under the Superannuation Guarantee (Administration) Act 1992 (Cth) and commit to incremental increases contained therein.

Recommendation: NSW Government to provide payroll tax exemptions to businesses who employ women and young people especially in industries where women are underrepresented.

²⁹ AMP, *How COVID-19 has widened the gender super gap* (31 July 2020) <<https://www.amp.com.au/insights/COVID-19/covid-19-widening-the-gender-super-gap>>.

³⁰ Women in Super, *The facts about women and super* (accessed 28 August 2020) <<https://www.womeninsuper.com.au/content/the-facts-about-women-and-super/gjumzs>>.

³¹ Rod Myer, 'Fears young women will suffer down the road from today's super withdrawals' *The New Daily* (online), 22 June 2020, <<https://thenewdaily.com.au/finance/superannuation/2020/06/19/young-women-losing-retirement/>>.

³² Sarah Simpkins, 'Early super release widening gender gap, AMP says', *Investor Daily* (online), 29 May 2020, <<https://www.investordaily.com.au/superannuation/47165-early-super-release-widening-gender-gap-amp-says#:~:text=Despite%20women's%20withdrawal%20amounts%20being,17%20per%20cent%20for%20men.>>>.

³³ Shane Wright, 'Young Australians tapping super early, running down nest eggs', *The Sydney Morning Herald* (online), 25 May 2020, <<https://www.smh.com.au/politics/federal/young-australians-tapping-super-early-running-down-nest-eggs-20200524-p54vv7.html>>.

Free Childcare Scheme

27. In April, the Prime Minister announced childcare would become completely free to allow parents to continue working during the COVID-19 pandemic³⁴. This policy overwhelmingly benefitted women, who were able to continue working or take on extra work to support their families.
28. The free childcare scheme ended on 12 July, with access to JobKeeper in this sector concluding only eight days later³⁵. As the childcare workforce is more than 90% women, these two changes created a detrimental cycle. For example, families whose income has decreased due to the COVID-19 pandemic are less likely to continue paying for as many childcare days as they may have previously, and childcare providers are less able to afford to maintain their full staff, in turn decreasing the number of places available for working parents to put their children into care when needed.

Recommendation: NSW Government to lobby the Federal Government to reinstate JobKeeper for the childcare sector.

Recommendation: NSW Government to extend council childcare centre funding scheme until April 2021 (12 months total) and extend the funding to all qualifying childcare providers in New South Wales for the same period.

29. Evidence from previous recessions and economic crises has shown women are likely to feel the effects for a decade, with a peak after two to three years³⁶. It is important to note the recent and swift widening of the gender divide when examining the future of work in New South Wales.
30. In their discussion paper on the impact of COVID-19 on women, the Shop, Distributive and Allied Employees Association (**SDA**) propose a 10 Point Plan for Gender Equity in a COVID-19 recovery and beyond³⁷. The plan, which is included in the SDA's submission to this Inquiry, is as follows:
- (a) *Gender analysis at the design stage as to the impact of policy decisions and interventions.*
 - (b) *Gender impact statement in the Federal and state budgets.*

³⁴ Conor Duffy, Lucy Kent and Brad Ryan, 'Childcare centres to be free for parents during coronavirus pandemic, Scott Morrison announces', *ABC News* (online), 2 April 2020, <<https://www.abc.net.au/news/2020-04-02/coronavirus-child-care-free-scott-morrison-announcement/12114110>>.

³⁵ Jordan Hayne, 'Free childcare to end in July after Minister says it did its job during coronavirus', *ABC News* (online), 8 June 2020, <<https://www.abc.net.au/news/2020-06-08/free-childcare-coronavirus-support-to-end-july/12332066>>.

³⁶ Marian Baird, Sara Charlesworth, Rae Cooper and Alex Heron, 'Women, Work and the Global Economic Downturn' (essay commissioned by the Federal Office for Women, 2011) 19.

³⁷ Shop, Distributive and Allied Employee's Association (NSW Branch), 'A Pink Recession... so why the Blue Recovery Plan: COVID19 – Impact on Women' (2020) 19.

- (c) *Women at the table on all decision-making bodies and institutions.*
- (d) *Ensuring that tax and social security measures do not continue to disadvantage women.*
- (e) *A public policy response to ensure investment in modern work and workplaces.*
- (f) *Economic investment (both public and private) and job creation which targets the whole economy and particularly the female dominated industries such as retail and the care sector (health, education, childcare, aged care, disability care), hospitality and tourism.*
- (g) *Industrial Relations framework which addresses the issues for working women including the historical undervaluation of work, pay equity, flexible work and discrimination.*
- (h) *Proactively address the gender retirement gap – super on every dollar for every worker.*
- (i) *Flexible work rights.*
- (j) *Access to training and skills development.*

31. Unions NSW endorses this 10 point plan as means of improving gender equity in all aspects.

Recommendation: NSW Government to adopt and implement the SDA's 10 point plan for Gender Equity.

Stimulate Low Earners

32. The COVID-19 pandemic has drawn back the curtain on how we value work in Australia and revealed that many of the types of work required to sustain the nation during a health and economic crisis have been undervalued.
33. In a June 2020 discussion paper, the McKell Institute recommended all lower-income (those earning under the annual \$18,200 tax-free threshold) workers who have performed essential tasks during the COVID-19 pandemic be granted a \$1,500 economic stimulus payment and be able to access up to \$1,500 tax rebate to stimulate spending early in the new financial year³⁸. The McKell Institute relevantly identified these workers as those who have continued performing jobs in the retail, health, education and training, public transport and cleaning sectors³⁹. It is estimated this scheme would cost \$3.48 billion but provide \$3.6 billion to \$8.7 billion additional economic activity in the medium term by significantly increasing the cash circulating in the New South Wales economy.

³⁸ Liliana Tai and Edward Cavanough, 'A COVID-19 Tax Rebate for Frontline Workers' (Discussion Paper, The McKell Institute, June 2020) 1.

³⁹ Ibid 3.

34. Unions NSW supports this proposal but believes the stimulus should be extended to all workers earning under the tax-free threshold and recommends the NSW Government lobby the Federal Government to deliver this stimulus to eligible workers. In our view, this measure will both act as a stimulus to the economy (noting lower-income earners have a higher marginal propensity to consume, increasing the circulation of cash⁴⁰) and give some recompense to those workers who have put their personal safety on the line during the COVID-19 pandemic.
35. The McKell Institute also recommended raising the tax-free threshold for the same group of workers to \$25,000, immediately granting a stimulus payment of \$1,292⁴¹. However, as the new financial year has commenced and requisite amendments were not made, the opportunity has passed to implement this stimulus measure, estimated to cost \$3.34 billion but deliver between \$3.47 billion and \$8.35 billion in extra spending nationally. Unions NSW ultimately supports raising the tax-free threshold, but again believes this change should apply to all workers.

Recommendation: NSW Government to lobby Federal Government to provide \$1,500 stimulus payment to all workers earning below the tax-free threshold in the 2020-21 financial year.

Recommendation: NSW Government to endorse and lobby the Federal Government to increase the tax-free threshold to \$25,000 for all workers in the 2020-21 financial year.

Access to Technology

36. The COVID-19 pandemic has created a learning environment for many, accelerating both our use of and reliance on technology and the technological inequities that exist in Australia⁴². Many State and Federal Government responses to COVID-19 rely on citizens' access to and use of technology to access services and information. For example, many businesses have moved to working from home and conducting business via the internet while children all over the country were required to continue their learning from home, facilitated extensively by access to appropriate technology and internet services including Google Classrooms. In addition, many Australian Taxation Office services or information portals were expected to be accessed online

⁴⁰ Gareth Hutchens, 'Young and low-income most likely to spend \$750 coronavirus stimulus payments: ANZ economists', *ABC News* (online), 9 September 2020, <Young and low-income most likely to spend \$750 coronavirus stimulus payments: ANZ economists>.

⁴¹ Ibid 8.

⁴² Jo Barraket and Chris Wilson, 'How COVID-19 is worsening digital inequality' on *Committee for Economic Development of Australia* (20 April 2020) <<https://www.ceda.com.au/Digital-hub/Blogs/CEDA-Blog/April-2020/How-COVID-19-is-worsening-digital-inequality>>.

37. For the digitally excluded (people unable to access the technology required to connect with a service, information or education), those needs went unmet due to social distancing and public health orders preventing access in other ways such as via community centres and libraries. Steps must be taken to prevent the increase of disadvantage stemming from lack of access to technology which is likely to cause significant social, educational and economic harm⁴³.

Recommendation: NSW Government consider expanding current community-based technology literacy training programs to assist people to use their devices and ensure equitable access to services.

The Use of Technology to Relocate Jobs Offshore

38. The last 20 years have seen a rise in large Australian companies taking advantage of technological advancements and globalisation, engaging overseas workers to do jobs previously performed in Australia but at a significantly reduced cost through low rates of pay.
39. The COVID-19 pandemic has exposed the security risk in our reliance on offshore labour for manufacturing and servicing. In addition, the working conditions of offshore labour are not safeguarded by Australian legislation and employment standards as are those of workers in Australia. The exploitation of offshore workers has been increasingly documented in the media, for example the ABC recently revealed Filipino workers sleeping on mattresses at the office while maintaining service standards to Australian companies⁴⁴.
40. As a result of the inability of offshore providers to meet service standards, thousands of jobs in the finance industry and other customer service-based roles have been brought back onshore since the global lockdowns began in March 2020⁴⁵. These are jobs that ought to remain in Australia even after the threat of COVID-19 has passed. Retaining these roles onshore will assist in raising the rate of workplace participation and ensure workers meeting the needs of Australian consumers are receiving acceptable pay and conditions.

⁴³ Ibid.

⁴⁴ Michael Atkin and Laura Kewley, 'Call centre staff in the Philippines have been sleeping at work during coronavirus lockdowns to help Australian customers', *ABC News* (online), 4 May 2020, <<https://www.abc.net.au/news/2020-04-28/call-centre-workers-in-philippines-sleeping-in-offices/12154842>>.

⁴⁵ Daniel Ziffer, 'Coronavirus work from home might become work done overseas', *ABC News* (online), 12 August 2020, <<https://www.abc.net.au/news/2020-08-11/covid-work-from-home-might-become-work-done-overseas/12542354>>.

Recommendation: NSW Government to develop procurement policies that give financial advantage in tender processes to businesses employing workers in New South Wales and/or Australia when providing government with goods or services.

What is a “Worker” Anyway?

41. Presently, permanent, fixed-term and casual employees have rights and entitlements which vary significantly in respect of access to paid leave, unfair dismissal and job security. Different again are the rights of independent contractors (typically performing work under an Australian Business Number) who do not benefit from the National Employment Standards prescribed in the *Fair Work Act 2009* (Cth) (**Fair Work Act**).
42. Unions NSW believes industrial relations reform needs to set minimum standards for all those who perform work (whether employee or independent contractor) and guarantee a minimum set of pay and conditions comprised of:
 - (a) a requirement to be paid at least the minimum hourly wage (currently \$19.84 for adults⁴⁶);
 - (b) workers’ compensation insurance;
 - (c) paid leave entitlements;
 - (d) legislated superannuation contributions; and
 - (e) the right to join a union and bargain collectively.
43. Unions NSW strongly opposes the creation of a third classification or inferior category of worker. Considering exploitation of workers already occurring on a large scale, we believe any new category of worker would only give greater license to employers and business owners to undermine the rights of workers. Rather, Unions NSW recommends the enforcement of greater protections within the current system by establishing a minimum set of pay and conditions for all workers, especially those operating in the Gig Economy.

Recommendation: NSW Government to lobby Federal Government to establish a minimum set of wages and conditions for all workers and especially workers within the Gig Economy.

⁴⁶ Fair Work Ombudsman, *Minimum Wages* (July 2020) <<https://www.fairwork.gov.au/pay/minimum-wages>>.

On-Demand/Gig economy

44. Unions NSW understands the on-demand or gig economy (for the purposes of this submission, the **Gig Economy**) refers to a landscape of digitally enabled companies (including multinational corporations) who use websites and/or mobile apps to pair workers with temporary “gigs” (tasks or jobs) performed both online and offline on demand. The nature of the relationship between the platform and the worker is contentious and problematic. Whilst platforms argue they are merely an intermediary facilitating a relationship within an electronic marketplace between a contracted worker and a consumer, it is clear there is an employment relationship with commensurate duties owed to the worker and to the purchaser. This may be seen particularly clearly in respect of work such as electrical trades, which must meet an industry standard or comply with licencing requirements.
45. The Gig Economy is underpinned by five key features:
- (a) Work is fragmented into specific individual tasks or jobs and workers are engaged on a task-by-task basis with no guarantees of continuous work.
 - (b) Work is performed by individual workers but may be commissioned by an individual or business.
 - (c) Labour transactions between workers and individuals and businesses are facilitated by a for-profit company who charges users for this service. These transactions are performed through web-based applications which are managed and controlled by the for-profit company.
 - (d) Workers are treated as independent contractors by the facilitating companies and are not afforded any employment protections or minimum standards in the performance of their work.
 - (e) The price charged for each job is set by the facilitating company or by the commissioning customer. Payment is collected through the platform, and compensation (net of the platform’s margin) is then disbursed to the worker.
46. Gig Economy work is varied and spans an increasing cross-section of industries. Most recognisably, the Gig Economy includes rideshare platforms like Uber and Ola, and food delivery platforms such as Deliveroo, Menulog and Uber Eats. However, the Gig Economy also encompasses:
- (a) platforms such as Hireup and Mable connecting care providers (i.e. aged care and disability support workers) with those requiring these services;
 - (b) platforms facilitating accommodation like Airbnb and Stayz;
 - (c) home cleaning services via platforms including Whizz and Helping;
 - (d) online marketplaces for hand-crafted goods such as Etsy;
 - (e) platforms like Airtasker and Freelancer which facilitate more varied and ad hoc work; and

(f) new entrant to the Australian market Amazon Flex, which operates in a similar manner to rideshare but for deliveries.

47. The Gig Economy makes up a small but growing proportion of the overall labour market. In August 2019, independent contractors accounted for 8.2% of the Australian workforce⁴⁷ and it is most likely gig workers comprise a subset of this number. The New South Wales workforce enjoys the highest portion of gig workers participating in our economy, at approximately 7.9%⁴⁸.
48. Research commissioned by the NSW Government estimated the Gig Economy generated \$2.6 billion of revenue to the State economy in 2016 (0.5% of Gross State Product), with 92,400 people in New South Wales using platforms to generate income⁴⁹. In light of the COVID-19 pandemic, which both increased demand for many services offered, and represented a relatively accessible form of income for many who had lost other jobs, it is anticipated a greater portion of the workforce in both New South Wales and Australia are now participants in the Gig Economy.
49. Unions NSW works extensively with migrant workers in New South Wales and believes there is an over-representation of international students participating in the Gig Economy. This phenomenon is further discussed from paragraph 207 of this submission.
50. It is difficult to estimate the extent to which the Gig Economy has permeated regional areas in New South Wales. Uber initially required 100 prospective drivers to have registered before launching in a new area⁵⁰. Anecdotally, however, rideshare providers like Uber can operate wherever a driver and rider are online, including in rural and regional areas. Many of these services are being provided outside of New South Wales' major cities, however, due to obvious geographical difficulties and distances, food delivery services are less present.

Independent Contractors

51. Companies participating in the Gig Economy have claimed they are not businesses who employ workers to perform service or produce goods. Rather, these entities argue they are technology platforms who provide 'lead generation' to workers.

⁴⁷ Australian Bureau of Statistics, *6333.0 - Characteristics of Employment, Australia, August 2019* (9 December 2019) <<https://www.abs.gov.au/ausstats/abs@.nsf/mf/6333.0>>, 'Table 10.1 Form of employment by industry, occupation and educational qualification'.

⁴⁸ 'Australians flock to gig economy for work, *SBS News* (online), 18 June 2019, <<https://www.sbs.com.au/news/australians-flock-to-gig-economy-for-work>>.

⁴⁹ Deloitte Access Economics, 'Developments in the Collaborative Economy in NSW' (Report for the NSW Department of Finances, Services & Innovation, 2017) 5.

⁵⁰ *Ibid* 8.

52. Unfortunately, certain aspects of the Gig Economy have created an environment in which workers can be exploited, as platforms and would-be employers can treat individuals as independent contractors and not employees. The work of genuine independent contractors is governed by commercial rather than employment legislation, providing platforms a loophole through which they can bypass requirements for minimum pay and conditions enjoyed by other workers. This status also narrows avenues available for workers to pursue disputes and seek remedies such as for unfair dismissal, workers compensation and wage theft⁵¹. In most cases, these ‘independent contractors’ do not have the sufficient control over their work location, hours, uniforms or pricing that would demonstrate they are true contractors and the platform exercises at least the same, if not more, control than an employer.

Case Study: Melanie

In 2018, Melanie downloaded an app and gained a job as a catalogue distribution walker for a four-week period. She had to sort and deliver catalogues whilst the app tracked her movements. After nearly 100 hours of work, Melanie estimated she was owed only \$150-\$200; or approximately \$2.00 per hour. Melanie was never paid the money owed to her and when she questioned the meagre hourly rate the company that had engaged her argued that as she was an independent contractor, the minimum wage did not apply.

Sham Contracting

53. A trend Unions NSW has observed rising in recent years is companies disguising an employment relationship as one of ‘client’ and ‘independent contractor’, or **Sham Contracting**. Sham Contracting encourages an arm’s length commercial relationship between parties and usually involves the purported ‘client’ (the employer) paying the ‘independent contractor’ (the employee) an agreed hourly rate and not affording entitlements such as penalty rates and leave accruals contained in the applicable industrial instrument. This practice often also seeks to evade income tax requirements.
54. Current employment legislation recognises the phenomenon of employers disguising employees as independent contractors. The Fair Work Act contains a contravention for misrepresenting employment as an independent contracting arrangement⁵². This contravention is a civil remedy provision, which may attract fines up to 60 penalty units (currently \$13,320) for perpetrators⁵³. However, businesses have seldom been pursued under these provisions.

⁵¹ Industrial Relations Victoria, *Report of the Inquiry into the Victorian On-Demand Workforce* (June 2020) 112.

⁵² *Fair Work Act 2009* (Cth) s 357.

⁵³ *Ibid* s 539.

55. In 2018, food delivery company Foodora was found to be in a Sham Contracting arrangement with their riders and owed more than \$8 million to its workers, who the Fair Work Commission found to be employees at law⁵⁴. In this case, the Transport Workers' Union (**TWU**) represented Foodora workers who were required to wear and use company-branded merchandise and be available for certain shifts. The Fair Work Commission found the company exercised such a significant level of control over its workers that they were employees. The Fair Work Ombudsman failed to become involved or take steps to protect these workers.
56. As with platforms like Uber Eats and Deliveroo, a significant number of Foodora's exploited delivery riders were international students⁵⁵. However, international students are not the only workers subjected to exploitation while working in the Gig Economy.

Case Study: Jeremy⁵⁶

Jeremy is a Sydney local who delivered food on his bicycle for three years. With the assistance of the TWU, Jeremy went back through payslips and discovered that his wages averaged out to about \$10.50 per hour, or about half of national minimum wage. An avid cyclist, Jeremy had started with Deliveroo as a way to earn an income whilst doing something he loved, though noted that this platform wouldn't grant riders access until they had signed certain forms which solidified the Sham Contracting arrangement.

57. Sham Contracting is a particularly common practice in the construction industry. The Construction, Forestry, Maritime, Mining and Energy Union (**CFMMEU**) has previously reported more than 30% of all independent contractors in the Australian workforce are working in the construction industry⁵⁷. In November 2010, the CFMMEU reported approximately 36% of workers in the industry were engaged as independent contractors and gave a conservative estimate that of these between 92,000 and 168,000 (representing 26-46%) were subject to Sham Contracting arrangements⁵⁸. PricewaterhouseCoopers recently found the annual underpayment bill in the construction sector is as high as \$320 million⁵⁹. Since the Australian Building and Construction Commission commenced in its present form in 2016, it

⁵⁴ *Joshua Klooger v Foodora Australia Pty Ltd* [2018] FWC 6836.

⁵⁵ Peggy Giakoumelos, 'Horrible hunger games': Protesters accuse Uber Eats of being a wage cheat' *SBS* (online), 14 May 2019 <<https://www.sbs.com.au/news/horrific-hunger-games-protesters-accuse-uber-eats-of-being-a-wage-cheat>>.

⁵⁶ 'Can the gig economy last?', *The Signal* (ABC, 29 August 2019) <<https://www.abc.net.au/radio/programs/the-signal/gig-economy-collapse/11458526>> 00:02:36.

⁵⁷ CFMMEU Construction & General Division, *Race to the Bottom* (2011) 1; also note: ABS 6333.0 - *Characteristics of Employment, Australia, August 2019* confirms this figure in 'Table 10 Form of employment by industry, occupation and educational qualification'.

⁵⁸ *Ibid*, 2.

⁵⁹ Ewin Hannan, 'ABCC defends focus on pursuing unions', *The Australian* (online), 22 January 2020 <<https://www.theaustralian.com.au/nation/politics/abcc-defends-focus-on-pursuing-unions/news-story/b6290507335c02c736b6b35ab279028d>>.

has not prosecuted a single employer for Sham Contracting but has directed \$3.2 million to prosecuting unions in the last three years⁶⁰.

Dependent Contractors?

58. There are several common features in the Gig Economy which undermine the “independent” nature of the work being undertaken by independent contractors.
59. Below is a non-exhaustive list of common Gig Economy features which demonstrate the dependent rather than “independent” nature of many workers:
- (a) **Platforms charge a fee to workers using the site/app.** This generally takes the form of a percentage of the fee charged to the customer.
 - (b) **Platforms regulate the behaviour of workers.** The public image and brand of the company is regulated. This extends to controlling the public interaction of workers on the website. Workers can be blocked from work for publicly expressing dissenting views.
 - (c) **Workers are dependent on ratings within the app for work.** Apps frequently provide opportunities for customers to rate workers within the app. Workers are then vulnerable to the app’s internal rating system (which is regulated and enforced by the platform) in order to receive further work. Rating systems are sometimes also used as a means to performance manage workers.
 - (d) **Platforms maintain the right to remove workers and thus restrict their ability to work.** Companies maintain the right to block workers from their platforms. This is particularly restrictive considering the market domination of Gig Economy platforms in certain industries, making it very difficult for blocked workers to continue working in the area. Workers can be blocked for low ratings, cancelling jobs or speaking out against the company. Workers are given few rights to challenge.
 - (e) **Platforms provide (limited and inadequate) insurance protection.** Some companies provide limited insurance. However, there are no uniform requirements for workers to be provided insurance cover or access to workers compensation. Many of the food delivery and rideshare platforms rely on Compulsory Third Party insurance policies to cover workers injured on the job.
 - (f) **Platforms provide equipment to perform work.** For example, Deliveroo and Menulog provide branded carry bags for deliveries as well as uniforms. Ola, Didi and Uber all provide signage for rideshare vehicles.

⁶⁰ Ibid.

- (g) **Platforms can control who performs the work.** Gig Economy work relies on individual worker profiles and ratings. Consequently, companies restrict workers from further outsourcing a task or having it partially performed by another contractor. This limits the ability of workers to fully control the nature and performance of their work.
- (h) **Platforms (sometimes) interview and screen workers.** For example, Whizz pre-screens workers before providing them with access to the platform. Deliveroo used to require riders to pass a riding test before they could work on the platform, however, have lifted this requirement as the market has become more saturated.
- (i) **Platforms (sometimes) provide training.** For example, Whizz runs a training and induction session for their cleaners, providing guidance on how work is to be conducted. Deliveroo runs training for new delivery riders/drivers covering road safety, branding and use of the app.
- (j) **Platforms can arrange a roster of shifts.** Some delivery companies have attempted to restrict the number of workers competing for jobs by requiring workers to sign up for shifts in order to access the app. Menulog and Amazon Flex are both known to operate in this way.
- (k) **Platforms enforce time limits on the completion of work.** The company may require work to be completed in a set time. For example, Deliveroo uses delivery time as a performance measure which determines continued access to the app.

60. The distinction between independent contractor and employee is often unclear. On the one hand, workers in the Gig Economy can choose their hours of work and what jobs they want to perform which provides a large degree of individual control over their work. This flexibility is not dissimilar to that available for casual employees and those working under labour hire arrangements. On the other hand, workers in the Gig Economy have limited bargaining power, are dependent on the company's platform for the allocation of work and have little control (depending on the work type and platform) over setting their own prices.
61. Tinkering around the edges of the definitions of independent contractor and employee will not solve this problem. Unscrupulous employers will continue to find loopholes and arguments to opt out of employment obligations and for this reason Unions NSW considers it crucial that the provisions outlined in paragraph 42 of this submission are included in industrial relations reforms to clarify and address the legal fiction around workers in the Gig Economy.

The Future of Work

62. The Gig Economy has been lauded for its use of digital technology to reinvigorate traditional business models in sectors as diverse as transport, accommodation and labour hire⁶¹. The future of work is only going to see further integration of technology into the organisation and provision of work. Technology should not be used as an excuse to bypass workplace standards or as a means of shifting risk onto employees.
63. The use of independent contractors in the Gig Economy is a pressing issue. Extending basic working conditions to all workers is crucial to ensure further technological developments are not used as a tool to undermine employment.

Application of Workplace Laws and Instruments

64. With only minor exception, Australia's state and federal workplace laws are ill-equipped to adequately regulate the Gig Economy and protect workers and consumers within it.
65. In addition to and compounded upon underpayment of workers in the Gig Economy is the non-payment of superannuation contributions on behalf of these workers. Sarah Kaine, from the University of Technology Sydney's Business School, notes that when these workers reach retirement, they will likely need to rely on social security to receive an acceptable retirement income⁶².
66. The current industrial framework means exploitation of workers in the Gig Economy will be fought case-by-case until changes are made to even the playing field between these workers and businesses. The regulation of the Gig Economy is unlikely to be accomplished solely through labour law reform and it will almost certainly require other institutions and jurisdictions to address fundamental issues within this sector of the economy.
67. It is incorrect to assume the Gig Economy is a homogenous workforce and that a solution for one group of workers will fit appropriately for another. For example, the needs and vulnerabilities of a tradesperson who performs handyman work via Airtasker twice a year are vastly different to those of a driver on the Uber platform or a disability support worker accessing work through Mable. However, there are protections that could be created in New South Wales legislation, to create a greater safety net for workers here.

Health and Safety Regulation

68. Work, Health and Safety (**WHS**) legislation in Australia generally contains broad definitions of the workers covered – such that obligations to provide a safe workplace are owed to anyone carrying out work in any capacity for a Person Conducting a Business or Undertaking (**PCBU**). This may include

⁶¹ Darcy Allen and Chris Berg, 'The sharing economy: How over-regulation could destroy an economic revolution' (Report for the Institute of Public Affairs, December 2014) 4.

⁶² *The Signal*, above n 56, 00:07:38.

employees, contractors and subcontractors (and their employees), employees of a labour hire company, outworkers, apprentices or trainees, students in work experience, volunteers and others⁶³.

69. If, as Uber has successfully argued⁶⁴, there were found to be no employment relationship between the platform and the worker, this could potentially place platform workers in a precarious position in relation to WHS. However, to the extent platform workers are considered independent contractors at law, applicable state WHS legislation may also give rise to obligations upon them in relation to providing a safe workplace.
70. The WHS regulator SafeWork NSW is not proactive in ensuring companies facilitating this work both know and understand their obligations, nor enforcing those duties.
71. Adding to the uncertainty clouding the sector, it is unclear if workers using platforms such as Airtasker are caught within the provisions of WHS protection laws, as the PCBU is not always easily identified. The uncertainty of a platform's duties under the *Work Health and Safety Act 2011* (NSW) is in itself a risk.
72. We note that the NSW Government Centre for Workplace Health and Safety is conducting ongoing research into the WHS characteristics of workers and operators in the food delivery sector of the Gig Economy⁶⁵. This project is due for completion in October 2021 and Unions NSW urges the Committee to seek evidence from those undertaking this research.

Delivery riders

73. The Victorian Trades Hall Council (**VTHC**) and the TWU conducted research in 2018 (with Unions NSW) and 2019 by surveying and interviewing workers in the Gig Economy, with a particular focus on food delivery riders. Initial findings from this research showed:
 - (a) 1 in 2 respondents had experienced risks to their health and/or safety;
 - (b) 1 in 5 respondents had been collided with or involved in an accident on work time; and
 - (c) 1 in 10 respondents had been injured while working.

⁶³ *Work Health and Safety Act 2011* (Cth) s 7 (model legislation adopted in the standard form by the Australian Capital Territory, New South Wales, the Northern Territory, Queensland, South Australia and Tasmania).

⁶⁴ *Amita Gupta v Portier Pacific Pty Ltd; Uber Australia Pty Ltd t/a Uber Eats* [2020] FWCFB 1698.

⁶⁵ Centre for Work Health and Safety, *Gig economy roles and responsibilities in WHS* (February 2020)

<<http://www.centreforwhs.nsw.gov.au/research-to-practice/Projects/gig-economy-roles-and-responsibilities-in-whs>>.

74. During interviews, delivery riders described risks to their personal safety including race-based verbal abuse, threats, intimidation, physical assault, working alone late at night in dark or unsafe areas and dealing with alcohol-affected customers⁶⁶.
75. Similarly, a 2018 survey conducted by Unions NSW, the TWU and Young Workers Centre highlighted the grave WHS conditions faced by food delivery riders. It was a common response that riders work in all weather conditions with inadequate training and protections⁶⁷. Additionally, the TWU has reported Deliveroo rider contracts appear to 'absolve the company of any responsibility toward its riders under workplace safety laws'⁶⁸.

Rideshare drivers

76. Another survey conducted in 2018 by the TWU and Rideshare Drivers' Cooperative of over 1,110 rideshare drivers showed 969 reports of harassment and/or assault⁶⁹. Many drivers reported having experienced:
- (a) death threats towards them and their families;
 - (b) threats of rape and sexual assault;
 - (c) being punched in the face;
 - (d) being held at knifepoint;
 - (e) having had car windows broken and cars stolen; and
 - (f) having received racial abuse.
77. The TWU has recently conducted new surveys of rideshare and food delivery workers and included the findings in their submission to this Inquiry. We urge the Committee to refer to the TWU submission for the most recent data about working conditions of these participants in the Gig Economy.

Airtasker

⁶⁶ Victorian Trades Hall Council, Submission to Victorian Department of Premier and Cabinet, *Inquiry into the Victorian On-Demand Workforce* (May 2019) 37.

⁶⁷ Transport Workers' Union of Australia, Submission to Victorian Department of Premier and Cabinet, *Inquiry into the Victorian On-Demand Workforce* (20 February 2019) 6.

⁶⁸ *Ibid* 4.

⁶⁹ Transport Workers' Union of Australia, *Ride-share drivers reveal low pay and violence* (12 March 2019) <<https://www.twu.com.au/ride-share/were-building-power/>>.

78. In a 2016 report detailed in paragraphs 85 to 90 below, Unions NSW found Airtasker did not require verification or proof of licenses for workers performing trade skills, electrical, plumbing or building work. These tasks are also not covered by Airtasker’s insurance policy⁷⁰.
79. Even more disturbingly, unions have uncovered evidence of extremely high-risk work being advertised and performed through platforms – such as the removal of asbestos⁷¹.
80. The NSW Government must tighten liability to provide greater protection to workers in the Gig Economy and for consumers who may engage unqualified workers.

Recommendation: Amend section 5 “Meaning of “person conducting a business or undertaking”” and section 7 “Meaning of “worker”” of the *Work Health and Safety Act 2011 (NSW)* to explicitly clarify the duty owed to workers in the Gig Economy. Currently, due to the diversity and extent of work in the Gig Economy, this assessment is being made circumstantially.

Recommendation: NSW Government to review SafeWork NSW regulatory requirements on the Work, Health and Safety duties owed to all workers in the Gig Economy by the companies/platforms facilitating this work.

Recommendation: NSW Government to continue financially supporting the Centre for Workplace Health in its ongoing research into the Work, Health and Safety characteristics of workers and operators in the food delivery sector of the Gig Economy.

Workers Compensation

81. Digital platforms typically do not provide workers compensation insurance in the same way a traditional employer does. In 2019, a national survey on digital platform work in Australia was commissioned by the Victorian Department of Premier and Cabinet and prepared by academics from the Queensland University of Technology, University of Adelaide and University of Technology Sydney (the **2019 VDPC**

⁷⁰ Unions NSW, *Innovation or Exploitation: Busting the Airtasker Myth* (2016) 9.

⁷¹ Katherine Gregory, ‘Airtasker: Unions raise safety concerns over ‘gig economy’ cowboys’, *ABC News* (online), 9 March 2018, <<https://www.abc.net.au/news/2018-03-09/unions-raise-safety-concerns-over-gig-economy-cowboys/9529736>>.

Survey). The 2019 VDPC Survey elicited more than 14,000 responses and showed the prevalence of digital platform work in Australia⁷².

82. The 2019 VDPC Survey found almost half of respondents currently doing platform work (45.5%) reported their main platform does not cover them for any type of work-related insurance (e.g. work-related injuries or professional indemnity)⁷³ and 39.7% of respondents indicated the platform they use requires them to take out their own insurance⁷⁴. More than 20% of survey respondents currently accessing work via a platform answered “I don’t know” to questions about whether their platform provides them with insurance or requires them to take out their own⁷⁵.
83. In the VTHC and TWU’s 2019 research into the on-demand workforce, 45% of respondents reported injuring themselves or knowing someone who had been injured during the course of their work⁷⁶. None of the workers surveyed reported receiving any compensation following injury.
84. Uber is an example of a platform which does not provide sufficient insurance coverage for workers. Unions NSW understands Uber’s insurance only covers riders and drivers from the time they accept the request until 15 minutes after delivery/drop off or if the order/trip is cancelled. This means an incident that occurs during time spent waiting for work on the app will not be covered⁷⁷. Additionally, the Uber policy offers a maximum pay-out of \$150 per day for no longer than 30 days for a bodily injury. This is well below the Australian transport industry standard⁷⁸.

Recommendation: Amend the definition of “worker” in section 4 of the *Workplace Injury Management and Workers Compensation Act 1998* (NSW) to recognise non-traditional workers and extend the obligation on platforms to provide personal injury insurance to all workers using their service.

⁷² Paula McDonald, Penny Williams, Andrew Stewart, Damian Oliver and Robyn Mayes, ‘Digital Platform Work in Australia: Preliminary findings from a national survey’ (preliminary report presenting findings from research commissioned by the Victorian Department of Premier and Cabinet, 18 June 2019) 3.

⁷³ Ibid 4.

⁷⁴ Ibid 22.

⁷⁵ Paula McDonald, Penny Williams, Andrew Stewart, Damian Oliver and Robyn Mayes, ‘Digital Platform Work in Australia: Prevalence, Nature and Impact’ (report presenting findings from research commissioned by the Victorian Department of Premier and Cabinet, November 2019) 6.

⁷⁶ Victorian Trades Hall Council, above n 66, 9.

⁷⁷ David Marin-Guzman, ‘Uber injury insurance kick starts push for contractor benefits’, *The Australian Financial Review* (online), 30 November 2018, <<https://www.afr.com/policy/economy/uber-injury-insurance-kick-starts-push-for-contractor-benefits-20181130-h18jv4>>.

⁷⁸ Transport Workers’ Union of Australia, above n 67, 9.

Case Study: Airtasker

85. In 2016, Unions NSW produced a report titled *Innovation or Exploitation: Busting the Airtasker Myth*⁷⁹, outlining the employment practices of the Airtasker platform. The report illustrates how Airtasker used a grey area of industrial law and classified people accessing work via their platform as independent contractors, circumventing minimum wage rates and removing employee safety nets.
86. Airtasker is an online Gig Economy platform and leading provider of task-based services. The company was established in 2012 and describes itself as a place you can ‘Connect with experts to get the job done’⁸⁰. ‘Job posters’ nominate specific tasks and rates of pay. ‘Taskers’ (workers) then apply for that task through a competitive and blind bidding process. The nominated worker carries out the work at the tendered price, from which Airtasker deducts a 10-20% service fee based on a tiered system⁸¹.
87. The Unions NSW report challenged Airtasker’s use of independent contractors and argued the platform was purposefully avoiding its employment responsibilities, encouraging a ‘race to the bottom’ for working standards. Central to these concerns were the lack of minimum rates of pay, safety and the use of the platform by businesses to outsource jobs.
88. Following the publication of the report, Unions NSW and Airtasker engaged in discussion on how the rights of workers using the platform could be improved. In April 2017, Airtasker and Unions NSW agreed:
- (a) all recommended rates of pay on Airtasker will be above comparative award rates;
 - (b) workers using Airtasker will be offered an affordable and flexible insurance product similar to workers compensation to protect against workplace injury and illness;
 - (c) both Airtasker and Unions NSW will work with the Fair Work Commission to develop an appropriate dispute resolution mechanism; and
 - (d) Airtasker will continue to work with Unions NSW to ensure best practice workplace health and safety standards are in place to protect workers and consumers using the platform.
89. The agreement with Airtasker was an important step in acknowledging the importance of minimum wages and safety precautions in the Gig Economy. However, the agreement is neither an enforceable instrument nor does it provide any safety net for workers in other areas of the Gig Economy.

⁷⁹ Unions NSW, above n 70.

⁸⁰ Airtasker homepage (accessed 19 August 2020) <<https://www.airtasker.com/>>.

⁸¹ Airtasker, ‘What is tiered pricing?’ on *Airtasker Help* (12 August 2020) <<https://support.airtasker.com/hc/en-au/articles/360022973151-What-is-tiered-pricing->>>.

90. The agreement highlights the risks currently facing workers in the Gig Economy and the failure of legislative tools to provide adequate protections. Unions NSW has an ongoing dialogue with Airtasker in relation to the 2017 agreement and the treatment of workers using the platform.

Case Study: Entertainment Industry

91. The Media, Entertainment & Arts Alliance (**MEAA**) has provide the example of voiceover artists accessing work via platforms for rates far below those minimum wages provided in the *Broadcasting, Recorded Entertainment and Cinemas Award 2010* or the *Commercial Voiceover - Industry Rate Card*.
92. Under the *Industry Rate Card* a voiceover artist must be paid an initial \$190 for recording a commercial script, plus additional amounts depending on whether the recording will go to air, in what format, where and for how long. In addition, workers must be paid the legislated 9.5% superannuation guarantee into their nominated fund. By contrast, prior to the COVID-19 pandemic, voiceover gigs were frequently advertised via online platforms for rates well below the legal minimum. MEAA has reported some jobs paying \$50 per hour for a minimum of 4 hours, single script readings for \$35 and that it is rare for artists to be paid superannuation when accessing jobs via these platforms⁸².
93. MEAA has reported jobs for photographers advertised on platforms which significantly undermine wages in the industry. Prior to the COVID-19 lockdown, several photography jobs found on Airtasker demonstrated the problem with jobs advertised at a range of different price points including several well below minimum rates. These include one advertised at \$85 (for 3 hours) and another for \$50 (for 2 hours)⁸³.
94. Depending on whether the work was for journalism or events/entertainment, each of those gigs should be paid a possible:
- (a) \$75.23 under the *Amusement, Events and Recreation Award 2020* as a casual grade 1 (noting the minimum engagement of casuals under this award is 3 hours), in addition to compulsory superannuation contributions by the employer; or
 - (b) \$116.11 under the *Journalists Published Media Award 2020* as a casual grade 1 (noting the minimum engagement of casuals under this award is 3 hours and 45 minutes), in addition to compulsory superannuation contributions by the employer.

⁸² Media, Entertainment & Arts Alliance, Submission to Victorian Department of Premier and Cabinet, *Inquiry into the Victorian On-Demand Workforce* (February 2019) 8.

⁸³ Ibid 9.

95. These amounts do include the 25% casual loading applicable to casual employees in Australia but do not include any other allowances or benefits that may be applicable under the relevant award, for example weekend or public holiday penalty rates, meal allowance or travel expenses.
96. It is also less likely that workers accessing jobs via online platforms such as Airtasker are declaring these earnings as a part of their taxable income.

Competition Laws

97. Workers in the Gig Economy are generally not precluded from sourcing work from multiple platforms due to their independent contractor status. Digital platforms facilitating work have consistently relied on the fact they do not exercise this level of control over workers in litigation questioning the employment relationship.
98. Often workers will use more than two platforms to gain work. For example, one study found approximately 24% of food delivery workers surveyed worked across multiple platforms, sometimes simultaneously.⁸⁴
99. While some platforms will ban workers for “multi-apping” (using two or more competing platforms to access work), other platforms have implemented various incentive schemes to encourage workers to only source work on one platform.
100. For example, Uber has at times offered a \$5.00 or \$10.00 bonus to drivers who complete three consecutive trips on the platform. Additionally, the new Uber Pro rewards scheme allows drivers to move through status tiers as they earn points by completing trips during peak (5 points per trip) and off-peak (1 point per trip) times. Each status tier unlocks increased driver benefits⁸⁵.

Right to Bargain

101. Compounding the exploitation in the Gig Economy causing low pay and poor conditions, Gig Economy workers (as independent contractors) are limited in their legal ability to take collective action, including through a union.
102. The *Competition and Consumer Act 2010* (Cth) prohibits “cartel conduct” which involves the fixing of prices by businesses through collective means⁸⁶. This adversely affects platform workers to the extent the law might consider them to be independent contractors, preventing them from unionising.

⁸⁴ Caleb Goods, Alex Veen and Tom Barratt, “‘Is your gig any good?’ Analysing job quality in the Australian platform-based food-delivery sector’ (2019) 61(4) *Journal of Industrial Relations* 502, 510.

⁸⁵ Uber, *Introducing Uber Pro* (accessed 28 July 2020) <<https://www.uber.com/au/en/drive/uber-pro/>>.

⁸⁶ *Competition and Consumer Act 2010* (Cth) Part IV Division 1.

103. For decades now, the NSW Government has succeeded in providing some low-leveraged contractors in the transport sector with access to collective bargaining and minimum standards.
104. Using provisions contained in Chapter 6 of the *Industrial Relations Act 1996* (NSW) “Public Vehicles and Carriers” (**Chapter 6**) (one of only two statutory instruments excluded from limitations imposed by the *Independent Contractors Act 2006* (Cth)⁸⁷) the NSW Branch of the TWU has been successful in unionising specified classes of owner-drivers who work under contracts of bailment and contracts of carriage in the transport industry.
105. Chapter 6 grants bargaining rights and contains a framework of protections allowing enforceable minimum pay and conditions to be determined for owner-drivers, recognising the vulnerability of these workers and flexibility required by transport operators. It also gives these contractors access to arbitration by a Contract of Carriage Tribunal⁸⁸.
106. While there remain important limitations to Chapter 6, it provides an example of a legislative instrument which has provided contractors in semi-flexible work arrangements basic rights and entitlements, including the right to unionise and bargain. Workers in the Gig Economy should have access to protections akin to and greater than those contained in Chapter 6. Noting the work performed in the Gig Economy exists on a spectrum both of skill level and dependency, all workers should have access to systems providing for an enforcement body to proactively inquire into the different types of work and set standards accordingly.
107. Unions NSW believes both the NSW and Federal Governments need to create through legislation an independent body responsible for setting and enforcing safe standards of work including fair pay and conditions. This body must be underpinned by legal provisions requiring:
- (a) universal application of binding, enforceable and safe standards covering all parties in the supply chain or contract network to ensure safe performance, planning and appropriate payments. These standards must focus on eliminating economic and contractual practices that place undue pressure on supply chains and contract networks;
 - (b) appropriate, enforceable pay and conditions for all operators and workers, irrespective of contractor status;
 - (c) the agency to resolve (including, where necessary, through binding decisions) supply chain and contract network disputes;
 - (d) an appropriate and adequate enforcement regime; and

⁸⁷ *Independent Contractors Act 2006* (Cth) s 7.

⁸⁸ *Industrial Relations Act 1996* (NSW) s 347.

(e) appropriate resourcing of supply chain and contract network auditing, training and education.

Recommendation: NSW Government to expand the coverage of the rights and protections in Chapter 6 of the *Industrial Relations Act 1996* (NSW) to workers in the Gig Economy. These protections should extend to supply chain and contract network accountability.

Companies Taking Less of a Cut

108. Companies in the Gig Economy are operating their platforms in a highly saturated and competitive market, often compromising on wages to get a competitive edge. The TWU estimates food delivery platforms now pay workers 30-40% less than when the industry first boomed in 2015-16 and advises several of the platforms previously paid hourly rates in addition to a per delivery fee.

As outlined above, it is unlikely the exploitation and underpayment of workers in the Gig Economy will be ended by changes to employment legislation. Rather, it is more likely platforms will need to be incentivised to ensure workers receive a minimum wage and the safety net set out in paragraph 42 above. It is vital the NSW Government contemplate how it could incentive companies to reduce the fee charged to platform users to guarantee minimum wages and conditions for all workers, for example by a reduction in payroll tax of fixed employees.

A Basic Set of Rights

109. It is inevitable the Gig Economy will continue to grow in number of participants and sectors covered.

110. In light of this, all gig workers in New South Wales must be granted the basic rights set out in paragraph 42 such that irrespective of whether a worker is labelled an employee or contractor, they can receive the fundamental minimum entitlements and have a safety net that cannot be undercut by any other method⁸⁹.

111. Unions NSW urges the NSW Government to better regulate the Gig Economy in New South Wales with a set of binding rights and conditions throughout the sector, including a means for workers in the Gig Economy to pursue their entitlements in a Court or Tribunal.

Recommendation: NSW Government to create/designate an agency responsible for the development of regulation, initiatives and safety provisions for the protection of workers in the Gig Economy.

⁸⁹ Industrial Relations Victoria, above n 51, 100.

Automation

112. The uptake of robotics, artificial intelligence and other labour-replacing technologies will affect a wider collection of jobs than ever before. While Australia's uptake of automation has lagged behind other nations, the economy looks set to catch up to its international competitors. An estimated 5 million jobs will be affected by automation over the next 10-15 years⁹⁰ and the ability of new technologies to replace more human capabilities means sectors previously safe from automation will be affected.
113. In 2018, Australia had the tenth highest rate of involuntary part-time employment of the 37 member countries of the Organisation for Economic Co-Operation and Development (**OECD**) and the seventh highest rate of youth involuntary part-time employment. OECD data shows the Australian economy is poorly placed to cope with the changes stemming from automation⁹¹. Prior to the disruptions of the COVID-19 pandemic, low unemployment figures concealed the reduction in real employment apparent from a steady rise in underemployment⁹². At the same time, large sections of the workforce are overworked and desiring reductions to their working hours⁹³.
114. This "employment gap" between overworked and underworked workers is growing. As it does, the economy's ability to absorb shocks to employment is being destabilised.
115. The differences between this and other industrial revolutions lie in our present situation where:
- (a) change is occurring much more rapidly;
 - (b) a larger number of jobs will be affected, including in industries not previously impacted; and
 - (c) there is a stagnation of wages.
116. There is an important distinction in an industrial setting between technological advancement and automation. Technological advancement may change the way in which workers perform work, and generally represent an improvement in working conditions. By contrast, automation of services may replace human labour with robots, machinery, and/or artificial intelligence to complete work more efficiently, safely or cheaply. We note that such replacements are not without error, such as the

⁹⁰ Committee for Economic Development of Australia, above n 2, 58.

⁹¹ Organisation for Economic Co-Operation and Development, *Incidence of involuntary part time workers* (2019) <https://stats.oecd.org/Index.aspx?DataSetCode=INVPT_I#>.

⁹² Australian Bureau of Statistics, *6202.0 – Labour Force, Australia, Jan 2020* (20 February 2020) <<https://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/3FA36ACAA0D90D66CA25852F001E10C4?opendocument>>, 'January Key Figures'.

⁹³ Chris Pash, 'Australians say they are overworked and underpaid', *Business Insider Australia* (online), 17 April 2018, <<https://www.businessinsider.com.au/australians-overworked-underpaid-robot-half-salary-guide-2018-4>>.

Federal Robodebt debacle which saw \$545 million mistakenly taken from the pockets of workers and students⁹⁴.

117. Unions NSW sees automation as an opportunity and believes it should not result in loss of jobs.

Additionally, policy makers have both an ability and obligation to control the speed of automation, and that the productivity benefits and unemployment risks of all new technologies are managed and distributed equitably⁹⁵. If governments do not take steps to ensure these things and be deliberate and considered in selecting what types of automation will receive more investments, we will likely experience mass structural unemployment and rising inequality.

118. One of the key economic risks theoretically posed by automation occurring at too great a speed and backed by inadequate policy is that the financial benefits from new technologies will rest predominately with the narrow highest echelon of income earners, who have a lower marginal propensity to spend. Accordingly, wealth may begin to further accumulate with a small few and wealth distribution through the economy will slow, further reducing the creation of new tasks for a recently displaced labour force⁹⁶.

119. The growth of automation is inevitable and it is vital legislators understand the distributional implications of automation in planning for a future that embraces and benefits from it⁹⁷. In other words, we must collectively reimagine our understanding of hard work⁹⁸.

Recommendation: NSW Government to establish a tripartite process for developing strategies to manage automation investment and implementation of new technologies to ameliorate the economic and social impacts within New South Wales. It is vital the speed of automation is controlled such that labour is not disproportionately displaced and the productivity benefits can be shared equally.

⁹⁴ Rebecca Gredley, 'Australians repaid \$545m from Centrelink's robodebt system', *InDaily* (online), 17 August 2020, <<https://indaily.com.au/news/2020/08/17/australians-repaid-545m-from-centrelinks-robodebt-system/>>.

⁹⁵ Daron Acemoglu and Pascual Restrepo, 'Artificial Intelligence, Automation and Work' (Working Paper 24196, National Bureau of Economic Research, January 2018) 33.

⁹⁶ *Ibid.*

⁹⁷ *Ibid* 34.

⁹⁸ Matt Novak, 'Automating Hard or Hardly Automating? George Jetson and the Manual Labor of Tomorrow', *Smithsonian Magazine* (online), 19 February 2013, <<https://www.smithsonianmag.com/history/automating-hard-or-hardly-automating-george-jetson-and-the-manual-labor-of-tomorrow-20694353/?no-ist>>.

Automation in Rural and Regional Areas

120. Automation of jobs in rural areas is liable to come at a particularly huge cost and is likely to further diminish remote communities whose economies rely on local labour. For example, labour intensive jobs in agriculture, meat processing and even non-region specific services such as supermarkets and banks are, though capable of being automated, crucial to the continuation of communities sustaining jobs which cannot be replaced by technology such as crop farming and animal husbandry. This is to say, maintaining a high rate of employment and preventing regional and rural populations from decreasing is crucial to the continuation of New South Wales' agribusiness sector.
121. Secondary complications of automation have already arisen in rural areas where local banking services have been phased out and partially replaced by ATMs, but internet banking and local businesses such as pharmacies and newsagents are not equipped to deal with complex banking transactions.
122. Considering the inevitable changes ahead, the NSW Government needs to be focussing on creating and retaining employment opportunities in rural and regional areas, including by creating technological hubs in these communities.
123. Steps can and need to be taken by legislators to prepare for the economic and social changes automation will bring to rural and regional areas by using learnings from the COVID-19 pandemic which has demonstrated the capacity for many thousands of workers in New South Wales to successfully work from home thanks to technological advancements facilitating remote work. The NSW Government should leverage this knowledge and incentivise workers capable of performing their roles remotely, particularly public sector workers, to relocate to rural and regional areas as a means of safeguarding these small economies.
124. Incentive provisions could be modelled on existing transfer provisions in the *Crown Employees (Police Officers - 2017) Award* and *Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2020*, which each contain allowances for an employee's transfer/relocation such as new school uniforms for children, temporary accommodation and removal costs.

Recommendation: NSW Government to identify what role it can play in using automation and technology to create more employment opportunities in regional areas.

Recommendation: NSW Government to incentivise businesses to expand in regional areas by granting a payroll tax rebate.

Recommendation: NSW Government as best practice employer to incentivise employees to relocate to rural/regional areas to bolster local economies suffering/anticipated to suffer from the growth of automation.

125. As outlined above, our State's proclivity to benefit or suffer due to the rise of automation is largely contingent on the degree to which policy makers are informed in building frameworks for us to move forward. Noting the future uncertainty, Unions NSW has identified three key elements we believe are fundamental to our preparedness for an economy increasing its reliance on automation:

- (a) reduced working hours;
- (b) portable leave entitlements; and
- (c) a lifelong training fund.

Reduced Working Hours

126. The length of the average working week has been declining since its peak in the early industrial period. In the early nineteenth century, the average worker could expect to work between 60-80 hours a week. Since then, economic development combined with concerted efforts of workers' unions ushered in large reductions to the length of the working week, improving living standards while managing unemployment by distributing reduced workloads more equitably.

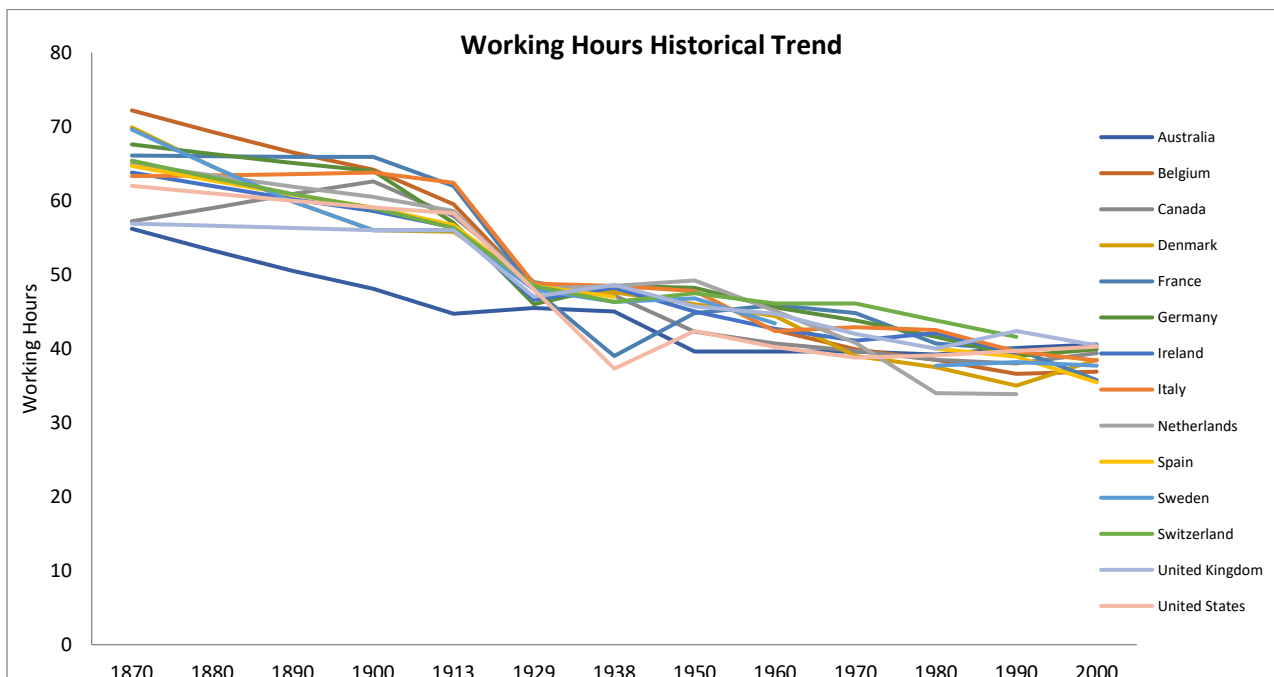


Figure 1 – Decline in working hours⁹⁹

⁹⁹ Data retrieved from: Our World in Data, *Working Hours* (2013) <<https://ourworldindata.org/working-hours/>>.

127. The push for an 8 hour working day was the central campaign for a shorter working week¹⁰⁰. In 1855, a group of Sydney stonemasons were some of the first workers in the world to win the 8-hour day. Victorian stonemasons went one step further the following year, winning the right to an 8-hour day with no reduction in pay. What then seemed like a radical demand would come to be commonplace by the early nineteenth century as legislation was introduced to extend the 8-hour day to all workers¹⁰¹.
128. Over recent decades the historical progress made towards shortening working hours has stalled. Despite increases in productivity and stagnant wage growth, the official length of the working week has remained at 38 hours since the 1980s. The realignment of the length of the working week in concert with productivity growth has contributed to an expanding employment gap between the overworked and underworked.
129. It is estimated automation will increase productivity by 51%¹⁰² in coming years. Given the current size of the employment gap, Australia's economy is poorly placed to distribute these productivity gains and needs to address the policy challenge to assist in reducing working hours without reducing wages and/or living standards.
130. As previously mentioned, a significant portion of Australians would prefer to be working less hours and as automation progresses, a mutual benefit from increased productivity could be shared with the labour market. In 2017, economics firm Alpha Beta suggested by 2030 the average Australian full-time worker would be able to delegate to a machine two hours of work per week¹⁰³. As the economy becomes more automated, the policy challenge will be how to keep as many people in work as possible to avoid a situation where those who remain employed shoulder a greater amount of work and disproportionate working hours while others become unemployed.
131. Noting the promotion and maintenance of a high employment rate is a national priority, Unions NSW has considered the concept of the Universal Basic Income (**UBI**). While we appreciate some of the theoretical benefits it presents, we remain agnostic about its implementation and effectiveness. In our view, creating and enforcing a UBI in Australia risks undermining the power held by workers as the value of one's labour becomes separate from one's income¹⁰⁴. UBIs are expensive, contribute little generative power to economies and inadequately provide for many, particularly workers with disabilities and those in regional and rural areas.

¹⁰⁰ Rowan Cahill, 'The Eight Hour Day and the Holy Spirit' on *Workers Online* (February 2005) <http://workers.labor.net.au/features/200502/b_tradeunion_hours.html>.

¹⁰¹ National Museum Australia, *Eight-hour day* (accessed 20 August 2020) <<https://www.nma.gov.au/defining-moments/resources/eight-hour-day>>.

¹⁰² Alpha Beta, 'The Automation Advantage' (report commissioned by Google, 2017) 20.

¹⁰³ *Ibid* 33.

¹⁰⁴ Jane F. McAlevey, *No Shortcuts* (Oxford University Press, 2016) 65.

132. In essence, though workers (and indeed the economy) may gain some stability through Australia having a UBI, collectivism will likely lose its leverage in the event the UBI is adjusted as workers will be largely unable to withdraw their labour and take industrial action as a form of protest.
133. In the opinion of Unions NSW, the preferred option the NSW Government should investigate and support is a jobs guarantee and a ban on unpaid overtime.
134. In 2019, Unions NSW commissioned research by YouGov into Australian attitudes and feelings towards automation and captured the findings in a report titled *A Robot Took My Job: Why Australians Back a Jobs Guarantee* which is included as an appendix to this submission. Of over 1000 Australian residents surveyed, 67% of respondents supported a government guarantee of a minimum wage job to everyone who wishes to work¹⁰⁵. There was a deep anxiety demonstrated by respondents about automation and its impacts.
135. In 2020, Unions NSW commissioned an online survey by Crowd Faction about what workers wanted the world to look like post COVID-19. Of over 5,500 respondents, the vast majority indicated “Full employment for a post-corona world” was the most important thing for them, in comparison to eight other options they were asked to rank which included “Government investment in renewable technologies & jobs” and “Income & job security for casual workers”¹⁰⁶.
136. A jobs guarantee would counterbalance the changes in technology and increased automation and provide sufficient employment opportunities for all.
137. The NSW Government must encourage and collaborate with the Federal Government to deliver a jobs guarantee capable of moving across industries, to steel the State from the adverse effects of automation and deter policy which would disproportionately burden workers not displaced by automation with excess working hours. This should include that government is an employer of last resort, and that workers should be diverted to government employment in COVID-19 stimulus package work as a first priority.

Recommendation: NSW Government to create and implement a jobs guarantee in collaboration with the Federal Government to ensure work is available for anyone who seeks it, with the government as an employer of last resort.

138. Unions NSW believes a ban on unpaid overtime for workers earning less than \$100,000 per year is a means of redistributing working hours across the economy. Equally, those employed under awards and

¹⁰⁵ Unions NSW, *A Robot Took My Job: Why Australians Back a Jobs Guarantee* (2019) 8.

¹⁰⁶ Crowd Faction, *Unions NSW – May Day Committee: Survey – Call to Action Results* (2020) 8.

agreements with provisions to pay employees for working overtime will continue to benefit from these payments.

139. The NSW Government should implement a ban on all unpaid overtime for its employees and lead the way in policy to redistribute working hours and share the benefits created by new and emerging technologies.

Recommendation: NSW Government, as best practice employer, to ban unpaid overtime for public sector employees to assist in redistributing work to create other job opportunities as part of a jobs guarantee.

Portable Leave Entitlements

140. It is imperative Australian workers have a stronger safety net for future major disruptions (such as a pandemic) and in the event Australia does experience significant job losses due to automation. It is Unions NSW's belief that all workers – irrespective of sector or type of employment – should be able to access sick and annual leave, including when they change employer.

141. Currently, particular industries in Australia allow workers to transfer their accrued long service leave entitlements when they move from employer to employer. These industries include:

- (a) building and construction;
- (b) coal mining;
- (c) stevedoring; and
- (d) contract cleaning.

142. Unions NSW understands provisions have been made for workers in these industries due to the nature of employees to work within one industry for a long time, but not work with a single employer for a long period. Unions NSW believes this is an antiquated and grossly unfair basis for some workers to benefit from further entitlements and that it should be immediately extended to all workers.

143. Earlier this year, the Victorian government passed legislation allowing for workers in the community services, contract cleaning and security industries to accrue their long service leave entitlements throughout their time working in the industry, rather than the time they spend working for a single employer¹⁰⁷. Unions NSW commends this step, however, does not believe it goes far enough to

¹⁰⁷ Victorian Government, *Information for workers* (2020) (<https://www.vic.gov.au/worker-information-portable-long-service>).

safeguard all workers' right to take a paid break after a significant period of dedicated work to their trade or speciality.

144. Extending provisions allowing for portability of leave entitlements is a particularly valuable way of benefitting women, who are over-represented in casual and part-time employment without long service leave benefits and less likely to be employed with one or more employer for 10 years or more. This is due to a highly likelihood of taking extended and often unpaid breaks from employment and disproportionately high carer's responsibilities compared to men. Providing for portable long service leave entitlements will support women who are returning to the workforce after having children and strengthen overall workforce participation.
145. Providing for portable long service leave entitlements will benefit all workers who may be forced to start working for a new employer due to the presently uncertain effects of automation on the Australian labour market.

Recommendation: Amend *Long Service Leave Act 1955* (NSW) to provide for portable long service leave across all sectors.

Lifelong Training Fund

146. In recent years there has been a steady decline in work-related learning. For example, apprenticeship commencements have declined for five consecutive years by 20,000 to just 56,265 in 2020¹⁰⁸. In addition to guaranteeing workers who are forced to move jobs will not be disadvantaged by missing out on long service leave, Unions NSW believes a training fund should be established which accumulates incrementally on the basis of a worker's number of years in the workforce. The demand for workers in the rise of automation is going to be largely related to skills not offered by machines, such as creativity, emotional intelligence and the ability to apply high levels of cognitive function¹⁰⁹.
147. The training fund would be a communal fund not dissimilar to a superannuation fund, into which employers must pay a specified amount (for example a percentage of an employee's income) to be accessed by an employee when they are seeking to progress in their industry or commence working in a new industry during the course of their working lives. Like superannuation, contributions will accumulate and benefit from interest over time, allowing for lifelong learning.

¹⁰⁸ Peter Roberts, 'Apprentice numbers hit by COVID-19 adding to training decline' *Au Manufacturing* (online), 3 April 2020, <<https://www.aumanufacturing.com.au/apprentice-numbers-hit-by-covid-19-adding-to-training-decline>>.

¹⁰⁹ McKinsey & Company, *How will automation affect jobs, skills, and wages?* (23 March 2018) <<https://www.mckinsey.com/featured-insights/future-of-work/how-will-automation-affect-jobs-skills-and-wages#>>.

148. Unlike superannuation, however, there will need to be incentives for employees to access the fund during their employment as we do not consider it appropriate for training contributions to be withdrawn at retirement.

149. The high levels of anxiety expressed by respondents to Unions NSW's 2019 survey about the effects of automation demonstrated the importance of training policies which enable workers to transition through and out of industries where significant job losses occur due to automation. By legislating a mechanism through which employees can access lifelong training to assist them in gaining new or developing existing skills, the NSW Government is able to remedy a significant level of uncertainty. It is important for all workers, as automation increases, to feel as though they have options and opportunities to continue working.

Recommendation: NSW Government to implement a training fund scheme to provide future training and education opportunities.

The Growth of the Service Sector

150. Demographic and technological change will likely result in continued significant growth in the service sector, particularly in health, social services and education.
151. Health, social and community services and education are three stand-out areas considered to be made up of non-routine and cognitive jobs, placing these industries at a low risk of automation. Further, these feminised areas of employment have seen significant growth over the last decade¹¹⁰.
152. The future of work will see further increases in the proportion of workers employed in the service sector. To this end, governments at all levels will play an important role as either direct employers or funding bodies of employers in the service sectors.
153. In recent years the health, education and social services have seen increasing levels of casualisation and short-term contracts often as a result of policy decisions made by government.
154. This is exemplified by the roll out of the National Disability Insurance Scheme (**NDIS**). The NDIS model prioritises flexibility and individual choice for people with disability, many of whom are also workers, but is anticipated to increase insecure employment in the disability sector. The Federal Government's approach will undermine the traditional model of permanent employment with a single service provider and will encourage an increase in casualisation and engagement of independent contractors¹¹¹. We have seen the impacts of making workers rely on multiple worksites to make a decent wage in the COVID-19 mortality crisis currently gripping federally-funded aged care homes.
155. There are significant concerns the NDIS model will encourage Gig Economy-style platforms with independent contractors. Already companies such as Home Care Heroes are providing NDIS-funded services through a model based on 'on demand' Gig Economy platforms.
156. On the Home Care Heroes platform carers are engaged as independent contractors. To receive work they must first build a profile on the Home Care Heroes website, where members (those seeking care) can request a booking. Prices paid by members are a fixed hourly rate of \$40 and Home Care Heroes takes a \$8.80 commission for every hour worked¹¹².
157. Not only does the Gig Economy approach to care undercut employment standards in the disability sector, it undervalues the work. Care and support work is complex and workers need access to ongoing development and professional supervision. This cannot be provided for through a Gig Economy app

¹¹⁰ Australian Government, *Australia's changing industry structure* (accessed 6 August 2020)

<<https://australianjobs.employment.gov.au/jobs-industry/australia%E2%80%99s-changing-industry-structure>>.

¹¹¹ Australian Services Union, Submission to Joint Standing Committee on the National Disability Insurance Scheme, *Inquiry into transitional arrangements for the NDIS* (17 August 2017) 5.

¹¹² Home Care Heroes, *Pricing* (accessed 28 August 2020) <<https://homecareheroes.com.au/pricing>>.

where rates of pay are so low. The result will be unsafe work and a lower quality of care for the most vulnerable members of the community.

158. When services are commissioned on behalf of government they should not be used to undermine Australian workplace conditions.

159. Job security is a crucial pillar of Australia's employment system with permanent employees provided access to unfair dismissal rights and redundancy payments. Additionally, labour standards associated with employment have been developed through extensive public debate to ensure a balance between the needs of business and the rights of workers to fair minimum conditions and a safe workplace. When a State or Federal Government commissions services, they have a responsibility to ensure these standards are upheld.

160. The future of work must prioritise job security and access to basic workplace entitlements. Government must set an appropriate example. This is particularly important in sectors which will make up a growing proportion of the overall workforce.

Education and Training

161. The impact of automation and technical changes on the labour force cannot be balanced by education and training unless educational spending is well informed by policy and able to pivot according to the skills required to compliment technological changes and industry development¹¹³.
162. Given the extent to which the rise of automation will displace workers is completely unknown, in addition to implementing policy to manage these effects, the NSW Government must create flexible education schemes to facilitate workers moving across and within industries. The education system, from school through to vocational and tertiary education and other adult learning, should be better aligned to reflect skills required in the future workplace¹¹⁴.
163. The NSW Department of Education must strengthen its industry partnerships as a means of both informing curriculums and providing ways for students to adapt to industrial disruptions. For example, students in Germany receive a combination of both theoretical education and practical workplace training, assisting them to effectively prepare for the labour market¹¹⁵. These schemes are developed with the assistance of industry participants, who in turn are able to acquire skilled entry level staff¹¹⁶.

Recommendation: NSW Department of Education to strengthen industry partnerships to inform education and training curriculums and adapt learning to the workplace.

164. In addition, employers in New South Wales need to be incentivised to work with unions to retrain workers whose roles are comprised or significantly altered by technological advancement and automation. In the face of rising automation, it will be increasingly difficult for workers who do not have adequate training to simply move into other jobs in the future. Training must be made available and be part of the consultation process in the face of major workplace change.

Recommendation: NSW Government to develop a tripartite industry initiative which can identify and assist employers and workers in industries transitioning due to automation and/or new technologies.

¹¹³ Acemoglu and Restrepo, above n 95, 33.

¹¹⁴ Alpha Beta, above n 102, 32.

¹¹⁵ Ibid.

¹¹⁶ Federal Ministry of Education and Research, *The German Vocational Training System* (2020) <<https://www.bmbf.de/>>.

Increase Access to Education and Training

165. Currently in Australia there are significant difficulties in workers transitioning through the employment market by changing professions without access to training and support. Many roles previously seen as “entry level” or not requiring qualifications have evolved in their skill requirements, particularly those roles which provide services to the sick, elderly and people with disability. Equally, workers engaged as cleaners, particularly in medical settings, must exercise a great deal of technical skill and knowledge. However, these positions are not remunerated on the basis of the evolving skill and knowledge requirements but rather on outdated notions of the work undertaken. In the wake of the COVID-19 pandemic there is an acknowledgement such roles are undervalued and these workers are essential workers who should be more appropriately remunerated and provided opportunities to complete further learning.
166. There should be an increase in the funding provided to TAFE and vocational education and training (VET) programs to make education and upskilling more accessible to all workers. With increasing automation, it will only become more difficult to move between jobs. Accordingly, training and upskilling is only going to become more important moving forward.
167. Additionally, increased education and training will benefit gender equity more broadly. As demonstrated earlier in this submission, COVID-19 has more commonly affected women in the workplace. Women in Australia are typically more adversely affected by job losses, noting they are more likely to have caring responsibilities¹¹⁷, and – as also outlined above – less likely to work in industries into which current governments will funnel money as a means of stimulus.
168. During this time of momentous change, Unions NSW believes education needs to be made more accessible, including by creating grants allowing workers to upskill. Industry-specific training schemes should be created to help New South Wales recover from the recession caused by the COVID-19 pandemic and decrease the unemployment rate.
169. Unions NSW notes the NSW Government’s contribution to the Federal Job Trainer scheme but encourages it to commit to an even broader scheme in this State.

Recommendation: NSW Government to review and increase TAFE and VET funding and link training to facilitate innovation and transition of workers into and through the new economy.

¹¹⁷ Workplace Gender Equality Agency, *Gendered impacts of COVID-19* (May 2020) 2.

Tax and Economic Considerations

170. At the core of any government's concern and ability to function effectively its liquidity, including the payment of taxes by citizens. The NSW Government's largest income stream is taxation, estimated to constitute 38% of total revenue in the 2019-20 budget¹¹⁸. Accordingly, maintaining the highest employment rate possible and universal adherence to tax obligations should be a top priority in New South Wales both now and into the future.
171. A decline in employment due to automation will affect the current government taxation model, as fewer employed people paying income tax is highly likely to lead to a growth in the number of citizens requiring government-funded social services such as welfare and housing. A decrease in employment will also result in reduced payroll tax revenue for the NSW Government.
172. Gig Economy platforms have a history of minimising tax obligations. For example, when Foodora withdrew from the Australian market in 2018, one of its many debts was to Revenue NSW for over \$500,000 in payroll tax owed under the *Payroll Tax Act 2007 (NSW)*¹¹⁹.
173. Unions NSW understands the Federal Treasury has sought to engage with industry about how to consistently tax participants of the Gig Economy¹²⁰ and urges the Committee to engage with and be guided by the findings, with a focus on ensuring taxation compliance from the platforms as a priority.

Recommendation: NSW Government to support the Federal Government in reviewing and updating approaches to dealing with taxation challenges as a result of the rise of the Gig Economy.

Recommendation: NSW Government to lobby the Federal Government to review how and if Gig Economy platforms should be responsible for administering tax collection and superannuation contributions from the earnings of workers using their platforms.

¹¹⁸ NSW Treasury, 'Revenue' in *Budget Statement 2019-20* (2019) 4-4.

¹¹⁹ David Chau, 'Foodora unable to repay Australian debts, as it owes \$28 million 'loan' to German parent company', *ABC News* (online), 29 August 2018, <<https://www.abc.net.au/news/2018-08-29/foodora-unable-pay-australian-debt-owe-28m-loan-to-delivery-hero/10179184>>.

¹²⁰ Commonwealth of Australia Treasury, 'Tackling the black economy: A sharing economy reporting regime' (A consultation paper in response to the Black Economy Taskforce Final Report, January 2019) 2.

Workplace Surveillance and Use of Data

174. As discussed earlier in this submission, neither automation as a concept nor the creation of new industries through technological advancement are new. Our current situation is a point at which our societies and economies will again need to adapt to change, now more rapid than ever before.
175. By contrast, Unions NSW considers some of the questions raised in respect of workplace surveillance to be issues not previously faced. Similarly, how electronic data created by employees in the course of their work is created, stored and used is a relatively new issue.
176. Transparency must be the overarching principle in developing this area of policy and regulation in the interests of promoting a positive workplace culture and managing the data collected through surveillance.

Workplace Surveillance Regulation

177. The *Workplace Surveillance Act 2005* (NSW) (**Workplace Surveillance Act**) governs and regulates an employer's ability to monitor their premises and employees. The Workplace Surveillance Act sets out requirements for the use of various means of surveillance, contains restrictions and prohibitions for surveillance and prescribes how covert surveillance records may be used.
178. Unions NSW does not deem the legislation in its present form adequate for workplaces in 2020 and beyond in that current regulation does not encapsulate:
- (a) all forms of surveillance technology being used;
 - (b) the secondary uses of various technologies used in the course of work;
 - (c) the extent to which surveillance data may be used to discipline workers; or
 - (d) that some technologies are notionally in place to protect or otherwise monitor the safety of workers in the workplace (either physically or online) but are frequently used for other purposes.
179. Another issue not adequately caught by the legislation is that of the potential encroachment on workers' privacy by the use of devices for work or to access work. For example, many workers in the Gig Economy will be required to use a provided device or a platform's app on their own device to access and/or complete work. In some instances, tracking capabilities within these technologies are unable to be switched off, meaning employers or platforms can know where workers go in their own time.
180. In 2015, it was reported Uber had updated its privacy policy to allow the company to track the location of users even when they were not using the app or when their phones were turned off, and to pass data

to third parties¹²¹. It was not until 2017 that Uber changed this policy, ending tracking of its users after they complete a ride and providing users with the option to share their location only while using the app¹²². Since this change, Uber has been required in the United States to implement a comprehensive and periodically audited privacy policy. Platforms workers in Australia have ongoing concerns about the creation, storage and monetisation of data associated with work they perform.

181. The investment by government and other employers in surveillance technology in recent years has fuelled micromanagement and collection of data which is not balanced by investment in security and training, nor for which there is any demonstrated need. For example, Unions NSW's affiliate unions have reported workplaces in which surveillance cameras have been installed in offices to monitor workers' actions (including those congregating for union meetings), but the same employers have been reluctant to install cameras for genuine security purposes such as in staff carparks. We believe the inadequacy of the Workplace Surveillance Act to keep pace with technological change contributes to a diminution of workplace rights and must be reviewed on an urgent and ongoing basis.

182. In assessing workplace surveillance regulation, minimum standards need to be set which create a clear delineation between using technology for safety and discipline. This must include prescription of specific circumstances in which various methods of surveillance can be used to discipline workers.

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

Recommendation: NSW Government to review New South Wales workplace surveillance legislation to:

- encompass all forms of surveillance technology being used;
- proscribe the secondary purposes for which surveillance data may be used by employers;
- outline the circumstances in which surveillance data can be used for disciplinary purposes;
- and
- require proscriptive policies in all workplaces in respect of the form and use of workplace surveillance.

¹²¹ Aleks Devic, 'Uber tracking customers, viewing address books under new agreement', *The Herald Sun* (online), 30 June 2015, <<https://www.heraldsun.com.au/news/uber-tracking-customers-viewing-address-books-under-new-agreement/news-story/0a50a9507ba3e3a073160804b4b439c3>>.

¹²² Laurel Wamsley, 'Uber Ends Its Controversial Post-Ride Tracking Of Users' Location', *The Two-Way* (online), 29 August 2017, <<https://www.npr.org/sections/thetwo-way/2017/08/29/547113818/uber-ends-its-controversial-post-ride-tracking-of-users-location>>.

Use of Worker Data

184. Unions NSW's affiliate unions have raised concerns in respect of workplace and employee-generated data. In addition to privacy, unions have detailed instances where data created by workers is used to assess workloads, determine Key Performance Indicators and formulate rostering, leading to a reduction of required duties and significant risk of jobs cuts. These concerns, though common in theme, vary significantly across sectors and industries and we urge the Committee to closely consider the submissions of unions to this Inquiry.
185. New South Wales needs stronger workplace regulation to protect workers as technology advances and more personal data is collected in the workplace. In developing this regulation, it is imperative greater visibility is provided in respect of:
- (a) the form and extent of data being created by workers;
 - (b) how this data is collected;
 - (c) how this data is being stored and where;
 - (d) who is storing the data;
 - (e) how this data can be accessed and by whom;
 - (f) what purpose the collected data is being put to; and
 - (g) who benefits from the data.
186. We also believe employers should be required to gain the explicit permission of workers before sharing or using any data produced by them during the course of their engagement or employment.
187. Unions are calling for a legal framework which provides every worker in New South Wales the right to know what data is held about them and the opportunity for workers to benefit from any secondary uses of data created by them. For example, if workplace data is sold to a third party workers should be entitled to any associated monetary gains.
188. Additionally, unions believe all workplaces in New South Wales should have to develop and implement a policy which clearly outlines the ways data is collected, stored and used, and an agreement about who benefits from the sale or other monetizable use of any data created by employees or contractors. As with workplace surveillance, it is imperative workers are actively informed about the lifecycle of data created by them.

189. Finally, the NSW Government needs to ensure sufficient enforcement of laws and regulations pertaining to workplace surveillance and workplace data. Unions NSW believes the Government should delegate an agency to have responsibility for this task.

Recommendation: NSW Government to implement regulation of workplace data, including an obligation for all workplaces to have a policy about the lifecycle of workplace data.

Recommendation: NSW Government to designate an existing agency to regulate and enforce workplace surveillance and workplace data regulation and legislation to ensure protection of all workers and their interests.

Workplace Change Obligations and Consequences

190. Unions NSW does not believe current workplace protections in Australia are fit for purpose, particularly those relating to consultation about major workplace change. Affiliate unions frequently report consultation provisions in awards and enterprise agreements being of little utility in practice, becoming negotiation forums for termination packages. Consultation periods – in which parties are theoretically obligated to explore options for redeployment and retraining – are very often a box-ticking exercise for employers prior to executing a predetermined termination plan.
191. Noting the potential for the rise in automation to lead to significant redundancies, it is important a fair and balanced industrial process is in place. This will require an overhaul of current provisions allowing redundancies for commercial reasons, where those reasons are presumed legitimate and rarely investigated or tested.
192. The *Employment Protection Act 1982* (NSW) (the **EP Act**) is this State’s legal framework for managing the termination of employment. Under the EP Act, an employer is not permitted to terminate the employment of any employee unless they have served on the Registrar of the Industrial Relations Commission (**Industrial Registrar**) a notice of intention to terminate the employment at least 7 days before either the notice of termination is given to the employee or (where circumstances do not require notice to be given to the employee) before the termination of the employment¹²³. Only employers with less than 15 employees are exempt from this requirement¹²⁴. It also does not apply to terminations of casual workers or in cases of termination due to employee misconduct¹²⁵.
193. The EP Act also requires the Industrial Registrar to notify the relevant union as soon as practicable after receiving a notice of termination¹²⁶, ensuring unions are prepared to assist the worker(s) facing termination.
194. Where the Industrial Registrar suspects an employer may have contravened or failed to comply with the requirements of the EP Act, he or she may provide the Chief Commissioner of the Industrial Relations Commission with a report¹²⁷, in response to which the Commission may make orders including:
- (a) *requiring the payment of severance payments to the employee concerned;*
 - (b) *requiring the payment of a gratuity to the employee;*

¹²³ *Employment Protection Act 1982* (NSW) s 7.

¹²⁴ *Ibid* s 9.

¹²⁵ *Ibid* s 7(5).

¹²⁶ *Ibid* s 10.

¹²⁷ *Ibid* s 11.

- (c) *specifying the amount of, or the method of calculating the amount of, any such severance payments or gratuities;*
- (d) *requiring the payment of benefits from a superannuation scheme of which the employee is a member, as if the benefits ordered to be paid were provided for by the scheme;*
- (e) *requiring the payment of an amount to the employee to compensate for any loss of accrued benefits under a superannuation scheme of which the employee is a member;*
- (f) *requiring the employer concerned to give preference to the employee for employment in a position for which the employee is or may become qualified, in the event that the employer requires additional staff within a specified period;*
- (g) *requiring, in special cases, the retraining of the employee, and requiring the payment by the employer of any costs of any such retraining;*
- (h) *requiring the payment of an amount to the employee by way of re-imbusement of salary or wages lost by the employee, in so far as the loss is, in the opinion of the Commission, attributable to a failure on the part of the employer to serve a notice on the Registrar in accordance with the requirements of section 7;*
- (i) *requiring the payment of any other sums, or the doing of any other act, matter or thing, in consequence of the termination of the employment of the employee, as appears to the Commission to be just and proper;*
- (j) *any ancillary matters relating to the matters referred to in any of the foregoing paragraphs of this subsection¹²⁸.*

195. Unfortunately, the EP Act – which in the opinion of Unions NSW contains a model protective framework for workers – has been all but nugatory since New South Wales handed over its private sector industrial relations powers to the Federal Government in 2009. New South Wales public sector employees are excluded from protection of the EP Act¹²⁹.

196. As part of the Federal industrial relations system, it is imperative employment protections similar to those provided by the EP Act are developed, to assist in preparing for changes and disruptions caused by automation. Of OECD member countries, Australia has consistently ranked low in respect of

¹²⁸ Ibid s 14.

¹²⁹ Ibid s 4.

strictness of employment protection for individual and collective dismissals and has declined in the last decade¹³⁰.

197. By contrast, countries such as the Czech Republic provide much greater protection to workers facing the termination of their employment. In the Czech Republic, the *Labour Code* requires an employer to consult about a termination or dismissal with the applicable trade union in advance, irrespective of the reason¹³¹. If an employer fails to comply, the Labour Inspectorate has powers to take action against them.

198. In the Netherlands, an employer is not permitted to terminate or dissolve the employment of an employee without permission from the public employment service or a Court¹³². In addition, many OECD member countries impose strict consultation requirements, including of trade unions, which acknowledge the economic ramifications of collective dismissal¹³³.

199. Unions NSW believes workplace change obligations should include obligations in respect of re-education and training of terminated workers.

200. Unions NSW acknowledges the limited power for the NSW Government to impose stricter workplace change and consultation obligations on employers, given the vast majority of industrial powers rest in the Federal system. However, we urge the Committee to consider the need for stronger regulation in the context of the future of work.

Recommendation: NSW Government to review the effectiveness of obligations on employers facing workplace changes, based on the framework contained in the EP Act.

¹³⁰ Organisation for Economic Co-Operation and Development, *Strictness of employment protection – individual and collective dismissals (regular contracts)* (2019) <https://stats.oecd.org/Index.aspx?DataSetCode=EPL_OV>.

¹³¹ Organisation for Economic Co-Operation and Development, *Czech Republic* (2019) <<https://www.oecd.org/els/emp/Czech%20Republic.pdf>>.

¹³² Organisation for Economic Co-Operation and Development, *Netherland* (2019) <<https://www.oecd.org/els/emp/Netherlands.pdf>>.

¹³³ Organisation for Economic Co-Operation and Development, '3. Recent trends in employment protection legislation' on *OECD Employment Outlook 2020: Worker Security and the COVID-19 Crisis* (2020) <https://www.oecd-ilibrary.org/sites/1686c758-en/1/3/3/index.html?itemId=/content/publication/1686c758-en&_csp_=fc80786ea6a3a7b4628d3f05b1e2e5d7&itemIGO=oecd&itemContentType=book#>.

Migrant Workers

201. Another vital area for consideration in the context of the future of work is the role played by migrant workers in the Australian economy.
202. Unions NSW stresses the economic stagnation caused by the high rotation of migrant workers and the discrimination and exploitation experienced by this group. In the view of Unions NSW, the migration system currently operating in Australia is cultivating a class of temporary visa holders who are exceedingly vulnerable¹³⁴.
203. As is of particular impact during the COVID-19 crisis, consideration needs to be given when changing the Australian migration system to the possibility of expanding migrant workers' access to the nation's public infrastructure such as health care and education. Such a change will increase the inclusion of migrants in the community and have practical economic outcomes for migrant workers and their families. Unions NSW believes that as migrant workers are taxpayers (and often pay tax at a higher rate), they should equally benefit from tax-funded services.
204. In addition to a change in the principles underpinning the migration system, greater support structures need to be created to assist migrants to adapt to their new environment and not become isolated. The first three months after a migrant's arrival is particularly crucial. This is a period when newcomers are most open to a deepened involvement in their new society. However, if migrants feel they have experienced racism or been ostracised, they will often retreat to their own cultural community for social acceptance¹³⁵.
205. To this end, Unions NSW would like to see an expansion of the family reunion visa scheme. Family connection is critical to social inclusion and participation and allows for a broader social engagement. For example, a migrant worker whose child attends an Australian school has the additional opportunity to become immersed in that school community. Similarly, workers who are able to bring their spouse to Australia are more likely to set down roots and make community contributions, rather than staying for the purpose of their work only and returning home with the money they have earned¹³⁶.
206. Unions NSW suggests below two significant policy issues in relation to visa restrictions upon temporary migrants that should be changed to reduce the exploitation experienced by these groups.

¹³⁴ Senator Kim Carr, 'Speech on the Migration Legislation Amendment (2017 Measures No. 4) Regulations' (Speech delivered at in the Australian Senate, Parliament House, Canberra, 5 December 2017) cited in Chris F. Wright and Stephen Clibborn, 'A guest-worker state? The declining power and agency of migrant labour in Australia' (2020) 31 *The Economic and Labour Relations Review* 34, 51.

¹³⁵ University of Technology Sydney Institute for Public Policy and Governance, *The Wellbeing of International Students in the City of Sydney* (Prepared for the City of Sydney, 2016) 12.

¹³⁶ Organisation for Economic Cooperation and Development, above n 4.

Visa Restrictions – Students

207. Current visa restrictions placed on international students compound experiences of exploitation and require reform. International students are restricted to working 40 hours per fortnight during their course and unlimited hours during course breaks. Research has shown large numbers of international students regularly work over these restrictions¹³⁷. The low, often below Award rates of pay many temporary migrant workers are subjected to regularly drive them to work additional hours in order to earn a living wage.
208. The 40-hour work restriction sends international students to the cash economy to disguise their visa violation, exposing them to further exploitation and is not an effective means of ensuring this visa class is being used appropriately.
209. Given the ‘off the books’ nature of these employment relationships, migrant and student workers are unlikely to receive payslips for their work which creates an evidentiary issue when workers seek to recoup unpaid wages.
210. There is also confusion around the application of the 40-hour working limit to independent contractors, particularly those who work in transport services like taxi driving and Gig Economy food delivery. For these workers, although they are only earning money while driving a passenger or delivering food, waiting time between jobs is still counted as ‘work’¹³⁸. For food delivery riders, taking into account the time between jobs, the hourly rate of pay can be as low as \$6.67 per hour¹³⁹.

Case Study: Marcello

Marcello is an international student from Brazil who has been working as a food delivery driver for almost 2 years. The company he works for classifies him as an independent contractor, but he is treated as an employee. He is not being paid superannuation and receives an average of \$12.00 per hour. Additionally, he must adhere to set shifts and if he does not, his future shifts may be reduced. Marcello knows this is below the minimum hourly rate but as English is his second language, his work options are limited.

211. International students working outside of their visa restrictions are reluctant to report or seek to rectify underpayment, due to fear of alerting Government authorities to their additional working hours.

¹³⁷ Laurie Berg and Bassina Farbenblum, ‘Wage theft in Australia: Findings of the National Temporary Migrant Work Survey’ (20 November 2017) 17.

¹³⁸ *Verma v Minister for Immigration & Anor* [2017] FCCA 69 at 15.

¹³⁹ Transport Workers’ Union of Australia, above n 67, 5.

Case Study: Maria

Maria is an international student from South America and since arriving in Australia has worked in hospitality for no more than \$13.00 per hour. One of her employers explained to her he would declare she was working 20 hours per week for minimum wage, however, for her to receive the pay for 20 hours' work, she would need to work 36 hours per week.

212. The aim of the 40-hour work restriction is to ensure international students are genuinely studying while in Australia on a student visa. However, it is evident the intent of the restrictions is not achieving its goal. It is instead contributing to the exploitation and underpayment of workers acting as a push factor towards the need for international students to work additional hours to afford to live in Australia. Indeed, the interaction of the restriction with the Gig Economy facilitates exploitation.
213. In the opinion of Unions NSW, the Federal Government should scrap the 40-hour limit on international students and bolster visa condition 8202 (Meet course requirements)¹⁴⁰ which already places obligations on international students in respect of attendance and academic performance requirements. This provides sufficient means to ensure students are genuinely studying and complying with their visa requirements.
214. Removing the 40-hour fortnightly work limit on international students will empower these workers to seek more legitimate jobs with employers who are more likely to pay them their legal entitlements, rather than pursuing exploitative environments by necessity. It will also mean that those students who continue to choose to work in the Gig Economy will not risk being penalised for breaching their visa conditions when their waiting time is counted as "work".
215. Like many students who engage in, learn from and enrich our workplaces throughout their studies, international students should be given greater opportunity to earn a living, gain experience and immerse themselves in a variety of areas of Australian life. By removing this impractical condition, the culture of exploitation in which many students work in excess of 40 hours per fortnight but receive pay for far less can be eliminated.

Visa Restrictions – Working Holiday Makers

216. The requirement for Working Holidays Makers (**WHMs**) to undertake 88 days of regional work to receive a second year visa is another indicator of the vulnerability of temporary migrant workers. An

¹⁴⁰ Department of Home Affairs, *Check visa details and conditions* (13 December 2019) <<https://immi.homeaffairs.gov.au/visas/already-have-a-visa/check-visa-details-and-conditions/see-your-visa-conditions#>>.

additional visa condition preventing WHMs from working for one employer for longer than six months severely limits employment opportunities and creates another barrier for reporting exploitation¹⁴¹.

217. The underpayment of WHMs is a standard practice among many employers. The *National Temporary Migrant Work Survey* highlighted 32% of WHMs were paid \$12.00 per hour or less¹⁴².
218. The six-month employment restriction placed on WHMs limits their employment opportunities¹⁴³. Employers are reluctant to invest time in training employees, restricting workers to casual or temporary employment opportunities. WHMs who have worked for an employer for more than six months are violating their visa requirements and face the prospect of visa cancellation. This is a similar scenario to international students working in excess of 40 hours per fortnight; for both, an additional barrier is created to taking action against employers to recoup stolen wages.
219. The Fair Work Ombudsman – in conducting inquiries – has found a continued level of exploitation of WHMs associated with the requirement for them to perform 88 days of regional work. Inquiries have also found it has led to increased exposure to unsafe situations¹⁴⁴, longer working hours¹⁴⁵, hazardous work environments, discrimination and sexual harassment¹⁴⁶.
220. Since December 2015, WHMs seeking a second year visa have had to provide pay slips to the Department of Home Affairs evidencing that wages earned during their 88 days of regional work are consistent with Award minimums¹⁴⁷. While the purpose of this regulation was to reduce exploitation, in practice it has accentuated the dependence of WHMs on employers providing pay slips¹⁴⁸ in order to remain in the country and reducing the preparedness of workers to make formal complaints.
221. Additionally, in the wake of the unprecedented bushfires experienced throughout Australia which spanned beyond the summer 2019/20 season, a government policy was enacted which permitted WHMs to satisfy their 88 day working requirement by assisting in the Federal Government’s rebuilding scheme¹⁴⁹. Unions NSW considers this blatant exploitation of unskilled workers and their desperation

¹⁴¹ Visa subclasses 417 and 462.

¹⁴² Berg and Farbenblum, above n 137, 26.

¹⁴³ United WHY, *Vulnerabilities of Working Holiday Makers and Policy Recommendations* (2016) 9.

¹⁴⁴ Fair Work Ombudsman, *Inquiry into the Wages and Conditions of People Working under the 417 Working Holiday Visa Program* (2016) 6.

¹⁴⁵ Ibid.

¹⁴⁶ Commonwealth Senate Education and Employment References Committee, *A National Disgrace: The Exploitation of Temporary Work Visa Holders* (2016) 167.

¹⁴⁷ Department of Home Affairs, *Specified subclass 462 work* (17 January 2020) <<https://immi.homeaffairs.gov.au/what-we-do/whm-program/specified-work-conditions/specified-work-462>>.

¹⁴⁸ Fair Work Ombudsman, above n 144, 43.

¹⁴⁹ Migrant Workers Centre, ‘Morrison Government’s Backpacker Bushfire Rebuilding Scheme Invitation for Exploitation and Injury’ (Media Release, 24 February 2020).

to comply with an unnecessary visa condition. Additionally, the policy put these workers at significant risk and was an inappropriate response to a national problem.

222. On 5 November 2018, the Federal Government announced proposed changes to the Working Holiday Visa Program¹⁵⁰. The changes included the introduction of a third year visa option for WHMs who undertake six months of specified work in regional Australia. While the announcement lacked operational details, it is clear the focus of the changes will not disturb the priority to support agriculture businesses¹⁵¹. To date, no additional measures have been implemented to combat Wage Theft or the exploitation of temporary migrant workers.

223. Despite the Fair Work Ombudsman's knowledge of the abuse and exploitation of WHMs, few proactive actions have been undertaken to effectively protect these workers or to reduce exploitation. Arguably, the Federal Government's 2018 changes continue to prioritise the labour needs of businesses and do nothing to protect vulnerable workers.

Recommendation: NSW and Federal Governments to place requirements upon universities and colleges to provide international students with information about their workplace rights and relevant industrial organisations.

Recommendation: NSW Government to lobby Federal Government to abolish the 88 days' farm work required for WHMs to secure their second year visa. By the Fair Work Ombudsman's own admission, this requirement facilitates backpackers working for less than minimum wage¹⁵².

Recommendation: NSW Government to lobby Federal Government to extend the time a WHM can stay with the same employer from six to 12 months.

¹⁵⁰ Scott Morrison, 'Doorstep with the Member for Forde' (Media Release, 5 November 2018).

¹⁵¹ Ibid.

¹⁵² Fair Work Ombudsman, above n 144, 30.

Conclusion

224. Unions NSW believes we are in the beginning of a Fourth Industrial Revolution in which the boundaries of work are becoming less clear¹⁵³ and labour progressively less secure.
225. As employers and companies take advantage of new technologies, we have witnessed a general shift of liability from employer to worker, particularly in respect of taxation obligations and the duties of WHS.
226. In the face of substantial change ahead, unions are calling for a significant reduction in the casualisation of the workforce and recommend a safety net for all workers which will allow workers in particularly low paid industries to move across and between industries most greatly affected by the rise in technological advancement. The COVID-19 pandemic has demonstrated it is not in government's interest to have less people in jobs paying less tax and more people requiring government assistance. Collaboration between industry, unions, workers and the government is needed to find and maintain an equitable balance.
227. Unions also call for better regulation of workplace surveillance and a framework of transparency to guide the handling and use of worker-generated data.
228. Technological developments are inevitable, and the benefits of increased capacity and productivity must be shared between all parties. What is good for business is not by default good for the economy and it appears to unions that New South Wales is presently suffering some growing pains of over-rapid changes¹⁵⁴.

¹⁵³ Schwab, above n 5.

¹⁵⁴ Keynes, above n 1, 1.

Reference List

A. Cases

Amita Gupta v Portier Pacific Pty Ltd; Uber Australia Pty Ltd t/a Uber Eats [2020] FWCFB 1698

Joshua Klooger v Foodora Australia Pty Ltd [2018] FWC 6836

Verma v Minister for Immigration & Anor [2017] FCCA 69

B. Legislation

Competition and Consumer Act 2010 (Cth)

Employment Protection Act 1982 (NSW)

Fair Work Act 2009 (Cth)

Independent Contractors Act 2006 (Cth)

Industrial Relations Act 1996 (NSW)

Payroll Tax Act 2007 (NSW)

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