Submission No 40

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

Organisation: Australian Institute of Employment Rights

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Australian Institute of Employment Rights

Submission of the Australian Institute of Employment Rights

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

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Executive Summary

The AIER urges the Committee of Inquiry to recommend that the NSW Government:

- act, to the extent that it can, to extend fundamental Australian and international labour standards and norms to all gig workers. In particular, we note the relevance of the AIER's Australian Charter of Employment Rights and Australian Standard of Employment Rights, as well the relevant conventions, recommendations and research of the International Labour Organization (ILO);
- provide a mechanism for ensuring decent rates of pay and accessible dispute resolution for food delivery drivers and cyclists by removing the exclusion of these workers from the scheme provided under Chapter 6 of the *Industrial Relations Act 1996* (NSW); and
- amend the *Workplace Injury Management and Workers Compensation Act 1988* (NSW), Section 5 and Schedule 1 to include rideshare and food delivery workers.

About the AIER

The Australian Institute of Employment Rights (AIER) is an independent not-for-profit organisation that works in the public interest to promote the recognition and implementation of the rights of workers and employers in a cooperative workplace relations framework.

The work of the AIER is informed by the Australian Charter of Employment Rights and the subsequent Australian Standard of Employment Rights.[1] Developed by the AIER in 2007, the Charter identifies the fundamental values upon which we believe good workplace relationships and laws must be based if they are to provide for fair and decent work. The Charter is based on fundamental rights enshrined in international instruments that Australia has willingly adopted and which, as a matter of international law, it is bound to observe; as well as values imbedded in Australia's history of workplace relations such as the "important guarantee of industrial fairness and reasonableness."[2]

The Charter can serve as a blueprint for assessing government policy, legislative reform and workplace relations practices. We encourage the Inquiry to use it as a reference for factors that need

[1] Bromberg, M. and Irving, M. (eds). 2007. *Australian Charter of Employment Rights*, Melbourne: Hardie Grant Books; Howe, J. 2009. *Australian Standard of Employment Rights: A How-to Guide for the workplace*, Melbourne: Hardie Grant Books. The ten principles of the Charter and Standard are included at appendix A.

[2] *New South Wales and Others v Commonwealth* [2006] HCA 52 [523-5].

to be considered in order to promote security, fairness and dignity within Australian workplace relations.

Introduction

The AIER is grateful to the Select Committee on the Impact of Technological Change on the Future of Work and Workers in New South Wales for the opportunity to provide a submission to this inquiry.

This past Monday, 23rd November 2020, marks the day another food delivery worker in the gig economy was killed on the streets of New South Wales and without accident insurance cover, the fifth in just the last three months.[3] As these tragedies illustrate, the promise of the increased consumer convenience, flexibility and efficiency of the gig economy is currently frustrated by the low pay and poor and often dangerous conditions that attend it, resulting from outmoded regulation and regulatory gaps that have failed to keep pace with changes in technology and business practice.

Much has been written on the emergence of precarious and insecure work in Australia in recent decades, the largest share of which relates to casual employment.[4] However, gig work represents a new phase of increased dualism involving workers that often fall foul even of the minimum pay rates, loadings and safety protections that casual employment provides. A proportion of gig workers enjoy the flexibility and employment opportunities of gig work over other forms of engagement but this is a separate issue to ensuring at the same time that gig workers enjoy comparable minimum standards relating to pay, safety and conditions to other workers.

In NSW and around the world, regulatory gaps mean gig work has come to be associated with low pay, unreliable and unpredictable work, poor long-term employment prospects, and lack of paid leave, superannuation and health and safety protections and insurance.[5] Regulatory gaps also mean gig work is associated with cost shifting from business to workers. These regulatory issues mean the potential macroeconomic benefits of the gig economy have been compromised through higher

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[3] Bonyhady, N. and Chung, L. 2020. 'Fifth food delivery rider dies following truck crash in central Sydney', *The Sydney Morning Herald*, 23 November, 8.

[4] See, for example, Campbell, Iain. 2013. 'An historical perspective on insecure work in Australia', *The Queensland Journal of Labour History*, No. 16, Mar, 6-24; Robyn May, David Peetz & Glenda Strachan. 2013. 'The casual academic workforce and labour market segmentation in Australia', *Labour & Industry: a journal of the social and economic relations of work*, 23:3, 258-275.

[5] See, for example, Johnston, H. Land-Kazlauskas, C. 2019. *Organizing on-demand: Representation, voice, and collective bargaining in the gig economy*, ILO International Labour Office, Conditions of Work and Employment Series No.94, Geneva.

absenteeism, lower productivity, increased tax minimisation and avoidance, and a drag on wages in other sectors.[6]

The gig economy is growing and has extended to many sectors, from fast food to health, aged and disability care, and higher education and training, and no sector is immune from its potential reach. We urge the Committee to ensure the growth of the gig economy is not artificially incentivised by regulatory arbitrage and that a level playing field is preserved to protect both standard employment arrangements and the businesses that use them from unfair competitive advantage. We urge the committee to learn from the growth of casual employment in this country and hence to address these issues now before gig work and undesirable business practices become institutionalised and thus more difficult to reform.

The countries that have made the most progress in extending standard protections to gig workers are in Scandinavia, where broad definitions of employment that include dependent contractors and thus the right to collective and sector bargaining have given rise to some sector-wide and platform-wide collective agreements.[7] Whilst, fundamentally, the gig economy will not adequately be reformed without action at the Federal level to universalise standard work rights and protections, there is still much that the NSW Government can and should do to protect its 'on demand' work force. In this submission, we outline some of the relevant work standards and protections in the AIER's Australian Charter of Employment Rights and subsequent Australian Standard of Employment Rights as well as relevant international norms and standards that ought to guide reform. Drawing on these, we outline two practical and achievable options for reform within the NSW Government's purview to extend existing small business and safety protections to gig workers who otherwise are left to fall through the cracks.

Applicable international and fundamental labour standards

We submit the evidence is clear that the activities being performed in the gig economy constitute work, and this work is being performed by workers who, irrespective of their form of engagement, are in need of standard rights and protections. Guidance as to the content of those protections can

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[6] See, for example, De Stefano, Valerio, *The rise of the «just-in-time workforce»: On-demand work, crowdwork and labour protection in the «gig-economy»,* ILO International Labour Office, Conditions of Work and Employment Series No.71, Geneva.

at 11.

[7] See Jesnes K. and Oppegaard, S (eds.) 2020. *Platform work in the Nordic models: Issues, cases and responses*, Copenhagen: The Nordic Council of Ministers publications; Söderqvist, F and Bernhardtz, V. 2019. Labor Platforms with Unions: Discussing the Law and Economics of a Swedish collective bargaining framework used to regulate gig work, Working Paper, Örebro: Swedish Entrepreneurship Forum, Örebro Universitet.

be sought in fundamental Australian labour standards and international norms. The Australian Charter of Employment Rights and the Australian Standard of Employment Rights draw on both sources. A summary of the principles in both the Charter and Standard is attached to this submission.[8] Although the titles of these documents refer to 'employment rights', the principles therein are directed at the broader category of 'workers' and not just employees.

ILO standards

The International Labour Organization (ILO) is the United Nations agency for work and labour standards and was originally established by the Treaty of Versailles which ended the First World War. The Treaty reflected the belief that universal and lasting peace can be accomplished only if it is based on social justice, including justice at work. The preamble to the Philadelphia Declaration, one of the ILO's foundational documents, states that, "Labour is not a commodity", meaning that human beings are not, and must not, be regarded as mere resources or factors of production, but rather they must be accorded their full dignity as human beings.[9]

Unfortunately, platform work is leading to the commodification of labour in various ways. On platforms, workers are urged to compete against each other and are often paid for small jobs or incremental units of time, without paid breaks or leave. Absent the protection of minimum standards, pay is dictated by market forces and subject to a race to the bottom. Through misclassification or dependent contractor arrangements, platform providers may avoid many of the duties they would otherwise owe employees, such as to provide workers' compensation insurance, job security and to cover equipment costs.

A strength of the ILO's work is that it proceeds on a tripartite basis and conventions and recommendations that emerge from the organisation have been through an exhaustive process of agreement involving not only worker and employer organisations but also governments of varying political hues. Hence, ILO standards are based in the realities of real work and workplaces. Australia has ratified both of the core ILO labour Conventions, Numbers 87 and 98, dealing with freedom of association and collective bargaining, and also the *Occupational Health and Safety Convention* (No 155).

The ILO's activities are guided by the concept of 'decent work'; which includes work that provides fundamental social and labour protections that serve the needs of all workers and provide safe and

[8] See also the *Australian Charter of Employment Rights* and the *Australian Standard of Employment Rights*, Ibid, note 1.

[9] See International Labour Conference, 26th, Philadelphia, 1944. *The Declaration of Philadelphia*.

healthy working conditions.[10] These objectives are relevant to all workers in Australia, including those working in the gig economy or who are engaged via 'platforms' of various types. Relevant ILO principles include:

- The right to organise and freedom of association (C87, Art.2, C98, Art.1);
- The right to bargain collectively and at any level, including sector and industry-wide bargaining (C98, Art.4);
- The obligation on Member States to provide a labour inspectorate to enforce labour standards (C81);
- The obligation on Member States to implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment (C144. Art. 4); and
- The necessity to "combat disguised employment relationships" (Recommendation No.198 (2006), Art. 4(b).

The ILO has produced a number of working papers dealing with issues relevant to gig and platform work. *Organizing On-Demand: Representation, Voice, and Collective Bargaining in the Gig Economy* (2019)[11] notes that:

> ... notwithstanding the challenges surrounding employment classification, we hold that labour performed under the banner of apps and platforms should be recognized as work, and that the people performing on-demand labour must be recognized as workers. This premise has important implications for freedom of association and effective recognition of the right to collective bargaining for gig and platform workers and NSE more generally, and must be acknowledged given the applicability of international labour standards in this context. The realization of these protections requires a review of existing, and where appropriate the development of new, regulations to ensure a level playing field. It may also require an adaptation of machinery used for regulating terms and conditions of work, including through collective bargaining, for bona fide independent contractors. Appropriate workplace protections must be afforded and fundamental principles and rights at work promoted, respected and realized no matter how work is structured. [12]

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[10] International Labour Organization. (2008). *ILO declaration on social justice for a fair globalization*. Available at: <https://www.ilo.org/gender/Informationresources/Publications/WCMS_100531/lang--en/index.htm>.

[11] Johnston, H. Land-Kazlauskas, C. 2019. *Organizing on-demand: Representation, voice, and collective bargaining in the gig economy*, ILO International Labour Office, Conditions of Work and Employment Series No.94, Geneva.

[12] Ibid, 2.

The paper also notes some of the limitations of optional, and possibly unenforceable, industry agreements and industry self-regulation.[13] An earlier paper notes that gig workers around the world face many of the problems that other non-standard workers do, but these may be particularly pronounced for gig workers who, as a result of self-employment or misclassification may be *"excluded or limited in their right to freedom of association and to collective bargaining, also because they could find themselves in breach of regulation such as competition and antitrust law (De Stefano, 2015)".*[14]

The AIER Charter and Standard

Drawing on ILO principles, as well as longstanding and fundamental common law rights in Australia, and developed in a tripartite process between business, unions and academics, the Australian Charter of Employment Rights also includes key principles relevant to the present inquiry. These include:

- The right to dignity at work [Principle 2];
- A safe and healthy workplace [Principle 4];
- Union membership and representation [Principle 6];
- Protection from unfair dismissal [Principle 7];
- Fair minimum standards [Principle 8];
- Fairness and balance in industrial bargaining [Principle 9]; and
- Effective dispute resolution [Principle 10].[15]

The Australian Standard of Employment Rights further elaborates on these principles and we draw these documents to the attention of the inquiry. Many of these rights are denied to workers engaged in the gig economy or who perform work via online platforms. The AIER submits that all workers, including those in the gig and online platform economy modes of work should be entitled to fundamental and core labour standards and protections. Australia has specifically committed to implementing certain of the labour standards and they should be applied to all relevant workers. It is time that Australian law was brought up to date to deal with these emerging work arrangements. We

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[13] Ibid, 30.

[14] De Stefano, Valerio, *The rise of the «just-in-time workforce»: On-demand work, crowdwork and labour protection in the «gig-economy»,* ILO International Labour Office, Conditions of Work and Employment Series No.71, Geneva.

at 11.

[15] See Bromberg, M. and Irving, M. (eds). 2007. *Australian Charter of Employment Rights*, Melbourne: Hardie Grant Books.

now turn to some practical reform options available to the NSW Government that would go at least some way towards achieving this.

Recommended reforms

Submissions already presented to the Committee of Inquiry speaking on behalf of workers undertaking on demand work in the digital economy present a range of specific reform proposals. We would encourage the Committee to look closely at recommendations made by Unions NSW, and the Transport Workers' Union, given their deep knowledge and experience of the nature of this kind of work and the regulatory schemes that presently apply to transport workers engaged as independent contractors.

We note here some measures that could be implemented by the NSW government to bring on demand workers within the protections of existing State schemes.

Decent rates of pay and dispute resolution

Presently, owner drivers and a range of other transport workers who fall outside of the common law definition of employment have access to the protective scheme of the *Industrial Relations Act 1996* (NSW) Chapter 6 'Public Vehicles and Carriers'. This legislation has its origins in legislation first enacted in 1979, and it has survived revisions of state industrial laws by both Liberal (in the *Industrial Relations Act 1991* (NSW)) and Labor state governments. Its operation is also specifically preserved (notwithstanding the enactment of Commonwealth legislation to otherwise cover the field, by the *Independent Contracts Act* s 7(2)(b)(i)). So the scheme has had bipartisan support for several decades. We note also that two other states operate similar schemes, the *Owner Drivers and Forestry Contractors Act 2005* (Vic) and the *Owner Driver (Contracts and Disputes) Act 2007* (WA), so other states have also accepted the need for special regulatory schemes providing means for setting decent rates of pay and access to dispute resolution for transport workers who are not employees.

The *Industrial Relations Act 1996* (NSW) Chapter 6 scheme provides for the making of contract determinations (which operate in a similar way to minimum awards to provide a safety net of decent remuneration), and contract agreements, following collective bargaining. It also provides access to a dispute resolution tribunal. As presently enacted, this scheme specifically excludes food delivery drivers and cyclists, because 'a contract of carriage' does not include a contract 'for the delivery of meals by couriers to home or other premises for consumption': s 309(4)(i). No doubt when this legislation was first enacted (in 1979), and even when it was most recently reviewed (in 1996), any person delivering meals to homes would have been a 'meals on wheels' charity worker, or an employed servant of a restaurant or other meal provider. Bear in mind that bread and milk delivery drivers were already deemed to be employees for the purposes of the Act by Schedule 1, cl 1(a) and

(e). The notion that fleets of delivery workers might be engaged by enterprises such as UberEats, Deliveroo, Foodora, Menulog and others to pick up food from restaurants and delivery to customers was unknown at the time this legislation was enacted. These kinds of workers are the very kind of workers who Chapter 6 was designed to protect. It would be a straightforward matter to amend s 309(4) of the Act to remove the exclusion of these workers from this scheme, that already deals with workers doing similar kinds of work.

Workers' compensation

The provision of workers' compensation coverage is a matter within State legislative competence. The AIER recommends that workers who are engaged in 'on demand' work should be deemed to be workers for the purposes of the *Workplace Injury Management and Workers Compensation Act 1988* (NSW), and the local arm of the digital platforms who engage them should be deemed to be their employer for the purposes of workers' compensation responsibilities, including providing insurance coverage, and responding to the workers' rights to reinstatement to their contracts if dismissed on the grounds of workplace injury.

We make this recommendation because on demand road transport workers do not appear to be covered by workers' compensation in NSW at present. Two decisions concerning on-demand food delivery workers in NSW suggest that rideshare drivers cannot access workers' compensation in NSW. In *Hassan v Uber Australia Pty Ltd* [2018] NSWWCC 21, an Uber driver's claim was rejected, because he was not able to establish that he had entered into a contract of service with Uber Australia Pty Ltd, even though that entity managed his engagement. The contract he had signed was with Rasier Pacific VOF, an unlimited partnership registered in the Netherlands, so he was denied access to workers' compensation in the jurisdiction in which he worked. In *Kahin v Uber Australia Pty Ltd* [2020] NSWWCC 118, [81], an UberEats rider who was assaulted while picking up a delivery sought access to documents to assist her in bringing a claim, but was refused discovery, and among the grounds given by the arbitrator was that the Fair Work Ombudsman had already found that rideshare drivers were not in employment relationships. These decisions suggest that on demand workers in the digital marketplace are presently excluded from workers' compensation coverage in NSW.

This could be addressed by an amendment to the *Workplace Injury Management and Workers Compensation Act 1988* (NSW) Section 5 and Schedule 1 which deems certain persons to be workers. Two clauses in this Schedule are relevant to digitally mediated work. Clause 2 – Other contractors – provides that a contractor is a worker for the purpose of workers' compensation coverage if the contractor performs work worth more than $10, and is not performing that work as part of any trade or business regularly carried on by the contractor in their own name, or does not subcontract the work or hire their own employees to perform the work. On its face, this provision could cover the typical rideshare or food delivery cyclist, except that it has regularly been interpreted in the light of the same common law multiple indicia test that distinguishes an employee working under a contract of service from a genuine independent contractor.

A regularly cited case, *Malivanek v Ring Group Pty Ltd* [2014] NSWWCCPD 4 ('*Malivanek*') sets out a range of factors determining whether a worker is the kind of contractor covered by Clause 2 at [235]-[243]). Among these factors are the provision of tangible assets for undertaking the work. On demand drivers and cyclists provide their own vehicles, mobile phones and data plans in order to undertake the work, so this factor tends towards excluding them from coverage. In *McLean v Shoalhaven City Council* [2015] NSWWCC 186, it was held that a contract driver who performed delivery work for a local council was not a deemed worker under this provision, because his contract was for the hire of a truck with a driver. The characterisation of a contract (for a truck with a driver, rather than for a driver with a truck) can be arbitrary and manipulable. It would be preferable to stipulate with certainty that ride share and food delivery drivers were deemed workers, without relying on the present contractor clause.

Clause 10 of Schedule 1 provides that drivers of hire vehicles or vessels under contracts of bailment (such as taxi drivers) are deemed workers. This provision does not include drivers who own or lease their own vehicles, so this provision, as it presently stands, would not cover on demand drivers who own their own vehicles, even though the work they perform is the same.

We submit that the deeming provisions in Schedule 1 should be amended to specifically name ride share drivers and food delivery cyclists as deemed workers.

The lack of workers' compensation coverage is an urgent problem. Reports of workers killed or injured in the course of this kind of delivery work are alarmingly frequent. In September 2020, two young men, Dede Fredy and Xiaojun Chen, were killed doing this kind of work. In November, three more cyclists were killed while making deliveries.[16] The work is paid at very low rates, so it is unreasonable to expect that the workers themselves will take out appropriate insurance coverage. Group insurance managed through the platforms engaging them is an economically efficient solution.

Conclusion

In this submission, the AIER has outlined relevant fundamental and international labour standards, including those relevant standards embodied in the Australian Charter of Employment Rights and Standard of Employment Rights. The AIER urges the Committee to recommend that the NSW Government act, to the extent it can, to extend these standard rights and protections to all gig workers. Two practical proposals for reform that the NSW government can implement without delay

[16] Bonyhady, N. and Rabe, T. 2020. 'Rider deaths reveal risky safety practices' *Sydney Morning Herald*, 3-4 October, 24.

are to provide a mechanism for ensuring decent rates of pay and accessible dispute resolution for food delivery drivers and cyclists by removing the exclusion of these workers from the scheme provided under Chapter 6 of the *Industrial Relations Act 1996* (NSW), and to amend the *Workplace Injury Management and Workers Compensation Act 1988* (NSW) Section 5 and Schedule 1, to include rideshare and food delivery workers.

Australian Institute of Employment Rights Inc

24 November 2020

Australian Charter of Employment Rights

Australian Standard of Employment Rights

Your tools for creating good faith relationships and healthy, productive workplaces.

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Australian Charter of Employment Rights

Recognising that: improved workplace relations requires a collaborative culture in which workers commit to the legitimate expectations of the enterprise in which they work and employers provide for the legitimate expectations of their workers.

And drawing upon: Australian industrial practice, the common law and international treaty obligations binding on Australia, this Charter has been framed as a statement of the reciprocal rights of workers and employers in Australian workplaces.

1 Good faith performance

Every worker and every employer has the right to have their agreed terms of employment performed by them in good faith. They have an obligation to co-operate with each other and ensure a "fair go all round".

2 Work with dignity

Recognising that labour is not a mere commodity, workers and employers have the right to be accorded dignity at work and to experience the dignity of work. This includes being:

- treated with respect
- recognised and valued for the work, managerial or business functions they perform
- provided with opportunities for skill enhancement and career progression
- protected from bullying, harassment and unwarranted surveillance.

3 Freedom from discrimination and harassment

Workers and employers have the right to enjoy a workplace that is free of discrimination or harassment based on:

- race, colour, descent, national, social or ethnic origin
- sex, gender identity or sexual orientation
- age
- physical or mental disability
- marital status
- family or carer responsibilities
- pregnancy, potential pregnancy or breastfeeding
- religion or religious belief
- political opinion
- irrelevant criminal record
- union membership or participation in union activities or other collective industrial activity
- membership of an employer organisation or participation in the activities of such a body
- personal association with someone possessing one or more of these attributes.

4 A safe and healthy workplace

Every worker has the right to a safe and healthy working environment.

Every employer has the right to expect that workers will co-operate with, and assist, their employer to provide a safe working environment.

5 Workplace democracy

Employers have the right to responsibly manage their business.

Workers have the right to express their views to their employer and have those views duly considered in good faith.

Workers have the right to participate in the making of decisions that have significant implications for themselves or their workplace.

6 Union membership and representation

Workers have the right to form and join a trade union for the protection of their occupational, social and economic interests.

Workers have the right to require their union to perform and observe its rules, and to have the activities of their union conducted free from employer and governmental interference.

Every worker has the right to be represented by their union in the workplace.

7 Protection from unfair dismissal

Every worker has the right to security of employment and to be protected against unfair, capricious or arbitrary dismissal without a valid reason related to the worker's performance or conduct or the operational requirements of the enterprise affecting that worker. This right is subject to exceptions consistent with International Labour Organization standards.

8 Fair minimum standards

Every worker is entitled to the protection of minimum standards, mandated by law and principally established and maintained by an impartial tribunal independent of government, which provide for a minimum wage and just conditions of work, including safe and family-friendly working hours.

9 Fairness and balance in industrial bargaining

Workers have the right to bargain collectively through the representative of their choosing.

Workers, workers' representatives and employers have the obligation to conduct any such bargaining in good faith.

Subject to compliance with their obligation to bargain in good faith, workers have the right to take industrial action and employers have the right to respond.

Conciliation services are provided where necessary and access to arbitration is available where there is no reasonable prospect of agreement being reached and the public interest so requires.

Employers and workers may make individual agreements that do not reduce minimum standards and that do not undermine either the capacity of workers and employers to bargain collectively or the collective agreements made by them.

10 Effective dispute resolution

Workers and employers have the right and the obligation to participate in dispute resolution processes in good faith, and, where appropriate, to access an independent tribunal to resolve a grievance or enforce a remedy.

The right to an effective remedy for workers includes the power for workers' representatives to visit and inspect workplaces, obtain relevant information and provide representation.

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Australian Standard of Employment Rights

Recognising that: improved workplace culture requires workers and employers to recognise their pivotal role as industrial citizens.

And building upon: the Australian Charter of Employment Rights, this Standard has been framed as a statement of the reciprocal rights and responsibilities of workers and employers in Australian workplaces which have received the distinction of being a 'Charter-Accredited Workplace'.

1 Good faith performance

A Employers and workers do not seek to mislead, deceive or trick each other but always seek to act in an honest and trustworthy manner.

B Employers and workers do not abuse any powers or discretions granted to them in the employment contract.

C No person in or associated with the workplace is subjected to harassment or humiliation so as to cause psychological harm or distress.

D Workers and employers act in good faith during termination of the employment relationship. Workers are dismissed only for a reason relating to their performance or conduct, or for operational business reasons. Workers are willing to serve the notice period required in their contract if they decide to terminate their employment.

E Employers and workers do not maliciously damage the reputation of the other.

F Employers do not seek to place an illegitimate restriction on the freedom of workers to pursue their careers once their employment relationship is over.

2 Work with dignity

A Employers and workers are committed to recognising and affirming the dignity of every person in the workplace.

B There is no bullying and harassment in the workplace.

C The employer regularly invests in the skill formation of workers and appropriate career paths are developed within the workplace.

D Surveillance of the workplace only occurs with the consent of workers and when used for a legitimate purpose.

E Every person in the workplace is committed to treating others with respect.

3 Freedom from discrimination and harassment

A The employer is committed to achieving a workplace that is free from discrimination and harassment based on protected attributes.

B The employer makes non-discriminatory decisions about all work related matters by giving every worker and job applicant fair access to all workplace opportunities and benefits.

C The employer has a clear set of policies and procedures for addressing and managing the risks arising from discrimination and harassment in the workplace. This includes:

i preparing and distributing a written policy on discrimination and harassment

ii ensuring that there is in place a protective investigation process which deals with complaints promptly and properly

iii maintaining thorough records and (subject to legal requirements) guaranteeing confidentiality

iv promoting the policy throughout the business

v providing training on operation of the policy to all workers, including those in leadership positions

vi if possible, appointing trained discrimination and harassment contact officers

vii reviewing work practices and regularly monitoring and evaluating the workplace culture to ensure compatibility with appropriate standards

viii guaranteeing that no worker will be victimised for making a complaint or for supporting someone who has done so

ix ensuring that all parties to the complaints process are permitted to have a support person, advocate, union official or other similar representative accompany them to any interviews or meetings

x providing a worker who has suffered discrimination or harassment in the workplace with access to counselling services or other employee assistance programs

xi dealing with perpetrators in a manner proportionate to the severity of their behaviour

D All workers are committed to achieving a workplace that is free from discrimination and harassment based on protected attributes.

4 A safe and healthy workplace

A The employer is committed to making safety part of the lifeblood of the business by minimising exposure to health hazards and taking all steps to minimise deaths and injuries in the workplace.

B The employer has a systematic, proactive and comprehensive risk management process to ensure the achievement of a safe and healthy workplace.

C There is consultation with workers about major changes to safety and health measures as well as changes to work that may have safety or health implications.

D Workers are given the opportunity to be represented in dealings with their employer concerning health and safety issues.

E There is adequate information, instruction, training and supervision given to workers to enable them to perform their work in a manner that is safe and without risks to health.

F The workplace is free of bullying, stress, abuse and anxiety that is detrimental to the worker's mental health.

G All workers are committed to achieving a safe and healthy workplace and to cooperating with management about workplace safety measures.

Australian Standard of Employment Rights

5 Workplace democracy

A Both employers and workers reject adversarial workplace relations and commit to seeking mutually beneficial outcomes.

B The employer does not have a blanket managerial prerogative but is committed to managing the business in a responsible manner.

C Both employers and workers are committed to engaging in constructive dialogue. As part of this, workers are allowed to express their views in the workplace and have their views considered in good faith by their employer.

D In the case of business decisions that have significant implications for workers such as workplace restructuring, workers have the opportunity to participate in the decision-making process by being provided with information and meaningful consultation.

E Workers are committed to cooperating with and supporting the employer's right to responsibly manage their business.

6 Union membership and representation

A Workers are not discriminated against or treated detrimentally for joining or being a member of a union or on account of their union activities.

B No job or other employment benefit is offered on the condition that the worker is not a union member or relinquish the right to union representation.

C The employer does not refuse to recognise a union or punish its members for participating in lawful industrial activity.

D The employer recognises that the right to collectively bargain is an integral aspect of union membership.

E The employer does not restrict the role of the union in representing workers within the workplace.

F Workers and their unions exercise their right to collectivism, responsibly, in good faith and with regard to their ongoing employment relationship and the dignity of every person in their workplace.

7 Protection from unfair dismissal

A The employer has a systematic and comprehensive risk management process to managing dismissals or terminations of employment in the workplace.

B The employer has a legitimate reason for termination of employment when that termination relates to the worker's conduct.

C Prior to termination and where possible, an employer should warn the worker about conduct or performance matters so that the worker has a reasonable opportunity to rectify the conduct or improve performance.

D Workers who are being dismissed are entitled to procedural fairness in the dismissal process.

E Where a worker is terminated because of the employer's operational requirements, the termination is to be treated as a redundancy, and procedures for determining and dealing with redundancies are followed.

F The employer is committed to respecting the dignity of all those involved in the termination process.

8 Fair minimum standards

A The employer is committed to complying with fair minimum standards imposed externally to the workplace.

B The employer, in consultation with workers, is willing and committed to providing fair standards that build upon the legislative minimum and which are tailored to the needs of the workplace.

C The employer respects the need of workers to live a fulfilling life and to attain a fair balance between work and the rest of their lives. In recognising this, the business is committed to developing policies on flexible work practices, parental leave, working hours and workloads, and other conditions within the workplace.

9 Fairness and balance in industrial bargaining

A Workers have the right to bargain collectively.

B All parties involved in bargaining for workplace agreements act in good faith and with due regard for the dignity and integrity of all persons in the workplace and relevant third parties.

C Workers have a right to use representatives of their choosing in the bargaining process.

D Workers have the right to use lawful industrial action as part of the bargaining process. Employers have a right to respond to this.

E The use of statutory individual agreements does not undercut collective agreements and is not used as a mechanism to avoid or undermine collective bargaining with workers.

10 Effective dispute resolution

A The process of dispute resolution is clearly documented and accessible to all workers, offering both formal and informal options.

B The employer has a well-designed dispute resolution process that aims to:

- **i** Guarantee timeliness, confidentiality and objectivity
- **ii** Be administered by trained personnel
- **iii** Provide clear guidance on the investigation process
- **iv** Guarantee that no worker is victimised or disadvantaged for making a complaint
- **v** Be regularly reviewed for effectiveness
- **vi** Guarantee that the worker can participate in the dispute resolution process without any loss of remuneration
- **vii** Graduate from informal to formal measures

C The dispute resolution process is procedurally fair.

D The process of dispute resolution allows the worker and the employer to be represented. Full access to relevant records and information as to the dispute resolution process is provided to the worker and their representative.

E If the dispute cannot be resolved at the workplace level, the dispute is referred to an independent and impartial body that has the power to resolve the dispute.

Australian Institute of Employment Rights

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