Making AI Work For Us

Submission by the Australian Council of Trade Unions to the House of Representatives Standing Committee on Employment, Education and Training Inquiry into the Digital Transformation of Workplaces

ACTU Submission, 28 June 2024

ACTU
australian council of trade unions

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Executive Summary

Artificial Intelligence (AI) is already transforming Australian workplaces. AI is present across industries. It is changing the way we work, and the type of work that we do. The rapid uptake of such technologies is set to accelerate. The decisions made today will have ramifications for decades to come.

Working people and their voice must be at the centre of decision-making on AI, its regulation, and its adoption.

The Australian union movement has taken a positive and proactive approach to AI. It is an approach that acknowledges AI's great potential to increase productivity and societal wealth, while remaining vigilant towards AI's proven capacity to cause immense social harm. Too often, AI has been used by powerful multinationals to displace and discipline workers in the pursuit of profit. We cannot allow these companies to decide the future of AI in our workplaces.

A strong worker voice is needed in the AI transition to act as a counterweight to these bad-faith corporate actors, and to ensure we are unlocking the genuine productivity gains that AI (when used to augment the skills and expertise of workers) can provide. Such examples of positive use of AI have already been seen in Australian manufacturing, healthcare, and elsewhere.

The union movement's goal is to ensure that all Australians benefit from the productivity gains of the AI transition, and that harm posed to workers and vulnerable members of society by the new technology is eliminated. This aspiration is achievable, but this will require that government takes a comprehensive and coordinated approach that incorporates worker voice at all levels of discussion over AI.

It is clear that there are deficiencies in our existing regulations and approaches to legislation that AI has a risk of exacerbating. AI will create new challenges for workers, employers, and policy-makers to overcome.

It will take dedication, creativity, and clarity to solve both new and old problems that the technology will highlight. Most of all it will take resources, both of government and of civil society, to effectively tackle the myriad hurdles we expect to encounter and those we, as a society, have not yet anticipated.

Workers demand that technological uplifts create a more equal society. We demand that the development of this technology is transparent and focused on building a better future for all. We demand that its use is positive and intended to provide better goods, services, and enhance creativity rather than diminish it. We demand a future free from discrimination enabled by

technology. And we demand that our democracy is made more robust, not less, as new technologies are introduced.

It is only rarely in our history we can see the transformative potential of a new set of technologies. As those with the power to do so it is our obligation to future generations to get the initial settings right, so we can realise a better future.

Introduction

About the Inquiry.

The ACTU welcomes the opportunity to make a submission to the House Standing Committee on Employment, Education and Training's Inquiry into the Digital Transformation of Workplaces. This is a significant issue for Australian workers and their unions. Experts widely predict that we are at the beginning of a fundamental transformation within our economy and our workplaces as a result of advances in Artificial Intelligence (AI), and the growing implementation of automated-decision making and machine learning techniques in the workplace.[1] The scope and scale of this transformation will only increase in decades to come, ensuring that the actions taken in this present moment to identify and ameliorate threats are of extreme significance for Australia's future.

We welcome the Committee's stated intent to 'inquire into and report on the rapid development and uptake of automated decision-making and machine learning techniques in the workplace' with reference to both the opportunities but also the very real threats that these technologies pose to workers' rights and to working people's experiences.

We note that the Committee's Inquiry comes at an important moment in discussion of how AI will affect Australian workplaces. A recent Essential Research Report conducted for the Human Technology Institute at UTS titled "Invisible Bystanders" detailed the far-reaching lack of consultation and engagement with workers over the introduction and utilisation of AI in nursing, retail, and the public sector. Not only did this diminish the voice of these workers in the implementation of these technologies, a lack of meaningful consultation contributed to a low understanding of AI, low awareness of how AI was being deployed, and low levels of trust among these workforces that AI would be implemented in a manner that would serve the best interests of workers and consumers.[2]

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[1] Pawel Gmyrek, Janine Berg, and David Bescond, *Generative AI and Jobs: A Global analysis of potential effects on job quantity and quality*, International Labour Organization (ILO Working Paper96: August 2023); International Monetary Fund, "AI Will Transform the Global Economy. Let's Make Sure It Benefits Humanity", *IMF*, accessed: https://www.imf.org/en/Blogs/Articles/2024/01/14/ai-will-transform-the-global-economy-lets-make-sure-it-benefits-humanity; Daron Acemoglu and Simon Johnson, *Power and Progress: Our thousand-year struggle over technology and prosperity* (London: Basic Books, 2023); Ajay Agrawal, Joshua Gans, Avi Goldfarb, *Power and Prediction: the disruptive economics of artificial intelligence* (Boston: Harvard Business Review Press, 2022).

[2] Essential research and the UTS Human Technology Institute, *'Invisible Bystanders': How Australian Workers Experience The Uptake of AI and Automation*, May 2024, 9.

In this context, it has been notable that the recent Senate Select Committee on Adopting Artificial Intelligence (AI) was established to 'inquire into and report on the opportunities and impacts for Australia arising out of the uptake of AI technologies in Australia', but did not include a specific term of reference detailing the effects of AI on Australian workers or the broader labour market. Similarly, the Department of Industry, Science and Resources has also recently conducted extensive consultations on 'how the Australian Government can mitigate any potential risks of AI and support safe and responsible AI practices'. We note with concern that the Department's consultation '[did] not seek to consider all issues related to AI, for example the implications of AI on the labour market and skills'.[3]

In our view, this was a missed opportunity. The adoption of emerging technologies including machine learning and AI cannot be effective without a strong worker voice – it is workers who have the knowledge and expertise to adapt and implement these technologies effectively in the working environment. A lack of explicit consideration of the effect of these technologies on the Australian workplace risks causing social harm by excluding working people from the discussion of how their working lives will be transformed.

As such, Australian Unions appreciate the forethought of the Minister for Employment and Workplace Relations, the Hon. Tony Burke MP in referring this matter to the Committee. We welcome the Committee's intent to provide further investigation on these significant matters.

The Australian union movement has taken a positive and proactive approach to AI and machine learning technologies. This includes considering opportunities for their implementation in a manner that will enhance productivity while ensuring working people enjoy the benefits of productivity gains, while also identifying the significant risks posed by AI. Substantial change will occur in our workplaces as a result of these new technologies. The shape of that change has yet to be determined.

The IMF estimates that up to 40% of jobs globally and 60% of jobs in advanced economies will be impacted by AI.[4] The potential for AI to have widespread effects on work is so significant that it is

[3] Department of Industry, Science and Resources, *Supporting responsible AI: Discussion Paper* <https://storage.googleapis.com/converlens-au-industry/industry/p/prj2452c8e24d7a400c72429/public_assets/Safe-and-responsible-AI-in-Australia-discussion-paper.pdf> ; Department of Industry, Science and Resources, *Supporting responsible AI: Discussion Paper: Government's Interim Response* <https://consult.industry.gov.au/supporting-responsible-ai>
[4] IMF, *AI Will Transform the Global Economy. Let's Make Sure It Benefits Humanity* https://www.imf.org/en/Blogs/Articles/2024/01/14/ai-will-transform-the-global-economy-lets-make-sure-it-benefits-humanity

impossible to meaningfully consider AI without considering how it will impact work – whether that be the impact on labour markets, or the impact on the way that work is performed or organised. This cannot be done effectively or accurately without listening to workers. Unions will not accept any erosion of living standards as a result of changes to how we work.

Our approach is based on the fundamental principle that workers' voices must be heard in all debates about AI, and its implementation in workplaces. This means workers' must be meaningfully consulted and included in decision-making about how AI is implemented, used, and reviewed.

Workers must share in the benefits that AI promises – and must not be made to bear the burdens of its implementation. This means workers sharing the benefits that are gained through increased productivity as a result of the use of AI and machine learning. This increased productivity will result from the efficient and effective use of AI *by* workers who are well-trained and well-supported in new processes and systems. Too often, discussions of AI's benefits miss this important fact. The technology itself will not deliver productivity enhancements – it is the skilled use of the technology by working people that will do so.

The Australian union movement stands by the principle that there must be a human-centred approach to AI. The potential benefits of AI can only be realised if it is sensibly regulated and the rights of all workers and citizens are protected. Dealing with these challenges requires a national and unified approach, led by government, that balances innovation, development, risk, regulation, and rights.

To do so, it is necessary to recognise that the AI transition has already begun. AI and digitisation is already embedded in work processes in a variety of sectors, from healthcare, to retail, to manufacturing, to the finance sector, to service industries, to creative work, to retail and warehousing, to the public service. Evidence has already accrued of how AI is currently being used in ways that undermine workers' rights, that further entrenches and perpetuates discrimination, and poses substantial threats to Australia's proud tradition of the fair go.

The protection of the fundamental rights of the working person must be at the centre of the AI transition, and must inform policy makers, employers, and regulators throughout the transition. These rights include:

- The right to work.
- The right to dignity at work.
- The right to have a voice as workers in the transition.

- The right for workers to be both meaningfully consulted, and to be active decision-makers in the potential implementation of AI in their workplaces.
- The right for workers to challenge decisions made about us.
- The right for workers to understand how AI systems operate, including the data they use, the algorithms they employ, and the criteria for their decisions.
- The right to privacy and security.
- The right to voice, movement, creativity and intellectual capacity.
- The right to lifelong training.
- The right to work free from discrimination and bias.

About the ACTU

Since its formation in 1927, the ACTU has been the peak trade union body in Australia. There is no other national confederation representing unions. For more than 90 years, the ACTU has played the leading role in advocating in the Fair Work Commission, and its statutory predecessors, for the improvement of employment conditions of employees. It has consulted with governments in the development of almost every legislative measure concerning employment conditions and trade union regulation over that period.

The ACTU consists of affiliated unions and State and regional trades and labour councils. There are currently 36 ACTU affiliates who together have over 1.7 million members who are engaged across all industries and occupations in the public and private sector.

Response to Terms of Reference

A. The benefits for productivity, skills development, career progression and job creation in Australia;

Automated decision-making and machine learning techniques are tools that can be utilised to deliver substantial productivity benefits, but it is not inevitable that this will be the case.

Genuine workplace productivity is driven by the skills, expertise, and dedication of a well-supported workforce collaborating with a management that is cognisant of the contribution made by their employees. Various forms of automated decision-making and machine learning can be used to augment work processes and enhance these skills and knowledge to deliver substantial benefits in productivity. One example of this is productive applications of machine learning currently taking place in the Australian manufacturing industry. This includes applications such as inventory management and predictive maintenance in equipment. As has been identified by

the Australian Manufacturing Workers' Union when combined with the expertise of workers trained to use these new applications, these new systems and processes are capable of improving efficiency and productivity, making Australian businesses more competitive.[5]

AI has also been adopted to analyse medical images. For example, AI is currently being used across specialities to identify anomalous areas in a scan which are then analysed more closely by a medical professional.[6] This provides a pertinent example of the positive potential of AI when it is used with worker input to complement rather than supplant human ingenuity and labour.

These are examples of how these technologies can be utilised in alignment with the skills and expertise of the workforce, based on a dedication to provision of further training and skills development, to a clear benefit of the industry. Such approaches can be successful when they are based upon meaningful consultation with workers and an appreciation of the necessity of worker voice being at the centre of adaptation of these technologies and applications.

These case studies also demonstrate that the productivity benefits of these technologies will be delivered by their skilled deployment by working people.

Unfortunately, we have also witnessed many examples in which the implementation of various forms of AI and machine learning has neglected meaningful workforce consultation, been imposed on workers, and/or been conducted with the explicit purpose of reducing workforce numbers. Not only does this cause immense harm to working people and our broader society, but as recent examples have demonstrated, is often self-defeating for these enterprises which, by reducing worker numbers, harm productivity by diminishing the skills, expertise, knowledge, and conscious decision-making prowess workers provide.

This has been seen with the fast-food chain McDonald's, which recently announced its intention to remove automated-AI order systems from more than 100 drive-through locations in the United States. These automated systems frequently misidentified orders as they are unable to deal with ambient noise and could not understand accents that differed to those upon which their datasets had been trained (also demonstrating how discrimination is often embedded into these algorithms). The repeated mistaken ordering that resulted was the subject of derision and

[5] Australian Manufacturing Workers' Union, "Australian Manufacturing Workers' Union contribution to the Select Committee on Adopting Artificial Intelligence", *Select Committee on Adopting Artificial Intelligence (AI): Submission 94*.
[6] Sen and Patel, Exploring The Uncertain Effects of AI-Powered Automation, 2023 3rd International Conference on Advance Computing and Innovative Technologies in Engineering (ICACITE), Greater Noida, India, 2023, pp. 2554-2558, 2556

mockery on social media, causing significant brand damage to the chain. The move to adopt AI processes for this work was explicitly contextualised by McDonald's and other fast-food chains as a means to reduce labour costs. This race-to-the-bottom attitude towards seeking productivity through labour displacement has resulted in loss of productivity, loss of revenue, and loss of customer confidence.[7]

There have also been an alarming number of cases in which companies – usually large multinationals – have utilised AI to impose de-humanising work practices and forms of surveillance upon their workforces, violating inherent rights and the dignity of the worker, including a growing number here in Australia. Such instances are further elucidated in detail below in discussion of the risks posed by AI (see response to term of Reference C on pages 18-20).

These technologies can help to create new job opportunities and increase productivity. But this will be conditioned by how we as a society determine to use them. We have a choice as a nation in our implementation of AI infused technologies and systems – will they be used to elevate our standard of living, to improve our quality of life and work, or will they be used in a race to the bottom on wages and conditions, leaving working people discarded on the scrap heap? This is a choice that should not be made on our behalf by the largest multinational companies.

These technologies must be used to create well-paid and secure, meaningful, and sustainable jobs. Increased productivity should be based upon using AI to unleash the potential of our skilled and dedicated workforce. We should not fall into the trap of confusing small and short-term gains facilitated by AI and accrued through the cutting of corners, of risking health and safety, or by diminishing the rights and dignity of workers, for genuine productivity improvement.

Making the most of the opportunities provided by automated decision-making and machine learning technologies will require a substantial commitment to ongoing skills development, and retraining, both from government and employers. The current experience of Australian workers, as captured by the report of Essential Research and the UTS Human Technology Institute,

[7] Don Lee, "Fast food operators rushing to use AI in the wake of minimum wage hikes", *Los Angeles Times*, 1 May 2024, accessed: https://www.latimes.com/business/story/2024-05-01/ai-powered-drive-thru-fast-food-operators-20-minimum-wage-california-carls-el-pollo-loco; Nick Robins-Early, "McDonald's ends AI drive-thru trial as fast-food industry tests automation", *The Guardian*, 17 June 2024, accessed: https://www.theguardian.com/business/article/2024/jun/17/mcdonalds-ends-ai-drive-thru; Harriet Barber, "McDonald's scraps drive-through AI after customer gets bacon ice cream", *Australian Financial Review*, 19 June 2024, accessed: https://www.afr.com/life-and-luxury/food-and-wine/mcdonald-s-scraps-drive-through-ai-after-customer-gets-bacon-ice-cream-20240619-p5jmxl

'Invisible Bystanders', demonstrates that most current AI training is ad hoc, and insufficient for need. The training rarely accommodates those with language barriers or those working with a disability.[8]

As was clearly articulated by Dr Jim Chalmers and Mike Quigley in their 2017 book, *Changing Jobs: The Fair Go in the New Machine Age*, the challenges of the transition posed by this new technology will necessitate changes to established forms of education at the primary, secondary, and tertiary levels. But the pace and rate of change and development that it is anticipated these technologies will bring means that education, skills, and training needs to be more broadly conceptualised as a career-long and ongoing process. Upskilling in new technologies, systems, and processes will be a constant through the career journeys of the future. In each industry and sector, this will look different, as specific systems and programs are adapted and innovated for use.[9]

This promises exciting opportunities for productivity enhancement. A McKinsey report on *Generative AI and the Future of Work in Australia* suggests AI could boost Australia's productivity rates by 0.1 to 1.1 percent to the end of the decade. But productivity improvements will only occur if workers are engaged, consulted, and supported in the ongoing skills development and retraining that will be required.[10] Chalmers and Quigley have detailed the potential scenario if this is not the case, invoking the concept of 'job polarisation'. This is the very real potential that AI will hollow out the 'middle' of the labour market, with the loss of what were once well-paid skilled jobs. If this happens, the labour market will be polarised with job creation on the extremes – with some very high paid jobs being created, and many low-paid jobs emerging.[11]

This might not have significant negative effects for certain workers who are advanced in their careers, but the effect on workers who are entering the workforce is obvious. Moreover, if AI replaces entry level jobs, the long-term effects of that replacement are that an entire generation of professionals may not enter the workforce, and therefore may not have the opportunity to advance to senior positions. This would exacerbate social inequality and has the potential to stoke social polarisation as a result. Every worker whose employment is affected by AI must have

[8] Essential research and the UTS Human Technology Institute, *'Invisible Bystanders': How Australian Workers Experience The Uptake of AI and Automation*, May 2024, 26-27.
[9] Jim Chalmers and Mike Quigley, *Changing Jobs: The Fair Go in the New machine Age* ((Carlton: Redback Quarterly, 2017), 92-139.
[10] Chris Bradley, Jules Carrigan, Gurneet Sing Dandona, and Seckin Ungur, *Generative AI and the future of work in Australia* (McKinsey and Company, February 2024), 10.
[11] Jim Chalmers and Mike Quigley, *Changing Jobs: The Fair Go in the New machine Age* ((Carlton: Redback Quarterly, 2017), 79-80.

a right to education and training throughout their career. Often, discussions on AI's effect upon the labour market are focused upon those positions that might disappear altogether as a result of machine learning. While this is a very real threat the union movement takes seriously, we are also conscious that an even larger variety of jobs are likely to be augmented and affected in other ways. Other jobs will be created that were not previously possible – and will require dynamic training and development to ensure workers are not left behind.

Education, training, and upskilling must be at the heart of our collective response to these technological innovations. Existing workforces whose future employment prospects might be diminished or otherwise affected by the adoption of AI should be given every opportunity to retrain with sufficient time to be able to participate in the workforce. Where job losses cannot be avoided, workers should receive adequate compensation, retraining and assistance to find other work.

B. The role of business software and regulatory technology ('Reg Tech') in improving regulatory compliance in the workplace relations system, including their use by regulators, and accountability for errors resulting in non-compliance;

We welcome any application of technology that can ensure that businesses comply with their obligations, particularly those that arise in relation to their responsibilities towards their workforces, while reducing the burden associated with doing so.

We note deep concern at the potential for emerging technologies to be used as a means for companies to obviate their regulatory responsibilities.

While many Australian businesses work hard to comply with their regulatory responsibilities, there is also a substantial section of large employers – often multinationals – and employer organisations that have vocally sought to undermine the basis of existing rights and protections. It is a genuine concern that companies with such an outlook will utilise new and emerging technologies to find new means to avoid regulatory compliance.

Accountability is key. All decision-making, including decision-making using AI, which affects workers must be open, transparent and capable of both internal and external review and challenge. The right of all workers to an explanation is a critical component of this and should ensure that workers know how, why, and by whom a decision has been made. There must be sufficient transparency to enable workers to understand decisions affecting them, including the circumstance of their making, to ensure that such decisions are not discriminatory.

It is of concern that there are deficiencies in our existing regulations and approaches to legislation that AI has a risk of exacerbating. AI will create new challenges for workers, employers, and policymakers to overcome. Access to this technology is not equal. It is conditioned by available resources – and it is the case that the largest companies have the greatest capacity to utilise this monopoly of access in a manner that obviates regulatory responsibility.

It is clear that there are substantial loopholes opening up in our current workplace laws as a result of the use of AI. For instance:

- The Fair Work Act's current anti- victimisation and discrimination (general protections) framework already fails to prohibit a lot of workplace victimisation and reprisal because of the way it deals with intent. These gaps will be exacerbated when AI processes are used in decision-making, due to the difficulty in ascertaining the how and why of the decisions these systems reach (requiring, as it does, detailed information on the programming of the algorithms used or may be hiding behind commercial-in-confidence contracts).
- The current content restrictions on bargaining impede negotiation over AI in enterprise agreements. Content restrictions need to be removed so that workers can negotiate around AI and its impacts.
- Current obligations around consultation with workers are important, but need to be optimised to drive better decision-making with worker input. Workers should be part of decision making, not an afterthought.
- AI requires and generates massive amounts of (worker) data. There are substantial privacy implications at stake in the development and implementation of these technologies. Workers should have control over their own data, but current privacy laws do not provide for this.

There are two fundamental mechanisms required to ameliorate these concerns.

The first is a strong and supported system to ensure worker voice is represented in a meaningful way in the implementation, utilisation, and review of these technologies in workplaces. Workers should have real input into decisions that are made about the introduction and use of AI, augmentation of work using AI, automation and other matters affecting them. Workers should be given the information they need to make informed decisions about future changes.

The second mechanism is a regulatory regime implemented on the federal level.

Both these mechanisms are further detailed below in response to Term of Reference E (see pages 25-28).

C. The risks, opportunities, and consequences for the nature of work, including effects on hiring, rostering, work intensity, job design, wage setting, monitoring, surveillance and job quality;

Work is a source of meaning and dignity for working people. Workers in Australia conduct the fundamental tasks that allow our society to function. Through their expertise, skill, and dedication, workers across industries are actively building Australia's future. The protection of their fundamental rights and dignity must be integral to the transition being generated by the widescale introduction of AI into Australian workplaces.

Australian workers are already witnessing the rapid expansion of AI technologies used for the purposes of staff management in areas such as shift rostering, surveillance, and productivity management. There is often a concerning lack of accountability demonstrated by companies in introducing these technologies, and a lack of meaningful consultation with workers as they do so – an issue highlighted, for example, by the Finance Sector Union (FSU) in its submission to this Inquiry.[12] This poses substantial dangers, for instance, with AI algorithms demonstrating a lack of consideration of human factors that influence the relationship a worker has to their work, such as caring responsibilities. This can embed a bias against the complex realities of working people's lives. All workers should be able to make a meaningful contribution to any attempt to use AI to alter their daily work processes and responsibilities, including a right to refusal.

For too many workers the threat of AI being used to undermine and diminish their working rights, and, in fact, to degrade their dignity and fundamental humanity, is not a potential future risk but a current lived reality. Below, we outline a number of examples of how a lack of worker voice and consultation in the implementation of AI has led to negative outcomes for the nature of work and the diminishment of fundamental working rights.

[12] Finance Sector Union, *House of Representatives Standing Committee on Employment, Education and Training: Digital Transformation of Workplaces Inquiry* (June 2024).

Before discussing the specific points raised in the terms of reference, it is important to state a point of principle relevant to all of them. We must have a human-centred approach to AI, especially in the world of work. No final decision about hiring, firing, or the treatment of a worker, should ever be made by AI, or based predominantly on data generated by AI. The union movement will not accept the abrogation of responsibility for decision-making to machines.

Hiring

The use of AI-generated algorithms in hiring practices has a high risk of denigrating the fundamental rights of workers, not the least due to the prevalence of discriminatory attitudes encoded into the algorithms performing such tasks.

AIs capability for outcomes which are plainly racist was demonstrated as early as 2015 when Google released its Photos app which was able to apply labels to photographs. When that app processed photographs of dark-skinned people it labelled them as gorillas.[13] This shocking failure was attributed to a lack of photographs of dark-skinned people being included in the training data.[14]

More recently, we have seen how such tendencies have affected the hiring process. Amazon's use of AI to make hiring decisions for tech roles was found to make decisions which were gender biased. The AI discriminated against female applicants, instead preferring male candidates. This was attributed to the algorithm being trained on a dataset in which the ideal candidate cohort was made up of primarily male CVs). This example is reasonably well-known, however the more alarming detail is that the gender-based discrimination continued even after it was first identified and corrected. This was because the AI developed a capacity to identify female candidates in less obvious ways – for example that the person attended an all-female school, was captain of a female sporting team or even simply by way of the style of language they used by comparison to a male applicant. In effect, the AI demonstrated an ability to discriminate that surpassed that of a human.

We note with concern the instances in which Services Australia has been using automated decision making and other forms of AI in recruitment, as raised by the Community and Public

[13] New York Times, Google's Photo App Still Can't Find Gorillas. And Neither Can Apple's https://www.nytimes.com/2023/05/22/technology/ai-photo-labels-google-apple.html
[14] Ibid

Sector Union (CPSU) in its submission to the Inquiry. In both instances, substantial issues of public interest have emerged in regards to the processes utilised and AI's effects.[15]

Rostering

As has previously been identified by the Shop, Distributive, and Allied Employees Association (SDA) algorithmic-led rostering without effective planning or consultation with workers has posed substantial risks to worker rights and experiences.

There have been increasing instances in Australia of work in retail and warehousing being distributed via apps such as *WorkJam*, or via algorithms. Such systems will typically track customer traffic, stock levels, and use other data to conduct task time analysis and determine the amount of workers required at stores across the week, electronically generating rosters on this basis. These rosters are then often communicated to workers via an app.

This often requires workers to check the app to identify the distribution of hours while not at work. This is especially the case for casual workers, who may be working unpredictable hours, or who require additional short-term shifts to make ends meet. This poses significant questions around the newly-enshrined right to disconnect, and whether use of these apps are effectively violating this right by creating an expectation to be conducting work outside of regular hours.

In practice, the use of such systems and apps has tended to contribute to the financial difficulties of low-income families, made it difficult for workers to access childcare, and impeded the ability of working families to spend time together.

Such a system poses serious compliance issues. For instance, these algorithms and apps that are rostering hours are systems of work, meaning they are located within the jurisdiction of workplace health and safety laws. Yet they are often not accessible to Health and Safety Representatives.

[15] Judy Skatssoon, "Automated selection bungling APS recruitment", *Government News*, 1 November 2022, accessed: https://www.governmentnews.com.au/automated-selection-bungling-aps-recruitment/; Miriam Webber and Justine Landis-Hanley, "Tax Office job candidates under the watchful AI", *The Canberra Times*, 29 January 2024, accessed: https://www.canberratimes.com.au/story/8499619/public-eye-how-the-ato-tried-hiring-via-artificial-intelligence/

These rostering systems were also not implemented through meaningful consultation with the workforce. As the SDA has noted, this is a violation of state-based health and safety legislation that necessitates mandatory consultation of such matters.

Automated rostering also functions in a dehumanising manner, diminishing the contact between workers and human decision-makers in management. This can make it more difficult for workers to make necessary representations, provide important contextual information around work requests, and communicate other necessary matters directly.[16]

Work intensity

The capacity and potential for AI to be used to institute forms of work intensification that violate working people's rights and basic standards of labour has been highlighted by leading experts for a number of years. Sadly, many examples of how large conglomerates have already used this technology to impose dehumanising forms of digital Taylorism are consistently coming to light.

In February 2024, the Institute for the Future of Work at University College London in the United Kingdom released its report titled "Does technology use impact UK workers' quality of life?". In an extensive survey of 4,802 British workers from a wide diversity of social demographics, the report concluded that 'extensive exposure to newer technologies [AI] was linked to lower average quality of life among workers'. This was strongly associated with the link between these technologies and 'workload intensification'.[17]

Similar trends are identifiable in Australian workplaces. As early as 2019, it was reported in the ABC that at Amazon's Melbourne warehouse was built on a 'culture of fear'. ABC described dehumanising conditions, where 'warehouse staff are constantly timed and monitored as they pack goods under instruction from an algorithm.' One worker at the warehouse was quoted as saying 'I feel like they resent the fact that I'm not a robot and that I'm made of flesh and bone.'[18]

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[16] SDA, *SDA Submission to Senate Select Committee on Adopting Artificial Intelligence (AI)*, 10 May 2024, Submission 41, pp. 4-5.
[17] Magdalena Soffia, Rolando Leiva-Granados, Xingzuo Zhou, and Jolene Skordis, *Does Technology use impact UK workers' quality of life?: A report on worker wellbeing* (Institute for Future Work University College London: February 2024), pp., 3, 26.
[18] Margaret Burin, "'They resent the fact I'm not a robot'", *ABC News*, 27 February 2019, accessed: https://www.abc.net.au/news/2019-02-27/amazon-australia-warehouse-working-conditions/10807308

As is explored further below, the intensive workplace monitoring of workers that has been rolled out in a variety of industries is directly connected to efforts to intensify work processes – with no heed being paid to the substantial workplace health and safety implications of such actions.

We note the detailed case study provided by the United Workers' Union (UWU) in it submission on the work measurement and monitoring system known as 'engineered standards' utilised by Woolworths, how the employer is using new technology to enforce impossible to satisfy speed of work, and the negative effects this has had on its workforce.

Job design

Much attention on the potential application of AI has focused on its potential to replace jobs. This is a major concern for the union movement, as is expressed elsewhere in this submission.

Of equal concern is the potential for AI to interrupt work patterns and to transform the nature of existing jobs, requiring new skills and training to support workers in roles that are transformed, without those workers being treated as disposable.

If workers are not to be left behind, it is absolutely vital that substantive and meaningful consultation takes place on any role alterations that result from the introduction of any AI into work processes. Workplace consultation provisions should be introduced to ensure that those who engage workers genuinely consult with workers about the potential use of AI in connection to their work, how this may change work patterns and processes, and the training and skills development required to ensure these workers are able to adapt to the use of these new technologies.

Wage setting

There is a great deal of anxiety about the potential effects of AI on wages. As the IMF recently warned, 60% of jobs in advanced economies will be affected by AI in the coming decades. The IMF has estimated that in roughly 50% of these jobs, 'AI applications may execute key tasks

currently performed by humans, which could lower labor demand, leading to lower wages and reduced hiring.'[19]

Such anxieties are grounded in empirical experience. As is evidenced by the example of McDonalds drive throughs above, there are very real instances of retailers using AI and new technologies as an explicit means to avoid having to pay basic wage standards to their workforces.

Professor Veena Dubal of the University of California has recently written in the *Columbia Law Review* on the practice of 'algorithmic wage discrimination'. This is a reflection on the recent phenomenon of employers accumulating data on workers which is then fed into an algorithm to determine work outcomes such as allocations of hours and responsibilities, and to assign penalties. Dubal outlines how algorithmic wage discrimination is used to 'maximize profits and to exert control over worker behaviour.' It often results in individual workers being paid different hourly wages, as determined by 'ever-changing formulas using granular data on location, individual behavior, demand, supply, or other factors—for broadly similar work.' This functions to often obscure the basis of decisions from the workers affected.[20]

Such patterns have been embedded in 'gig' work. 'Gig' workers for many years have endured punishing workloads allocated by algorithm while in the effective employ of companies who use contract arrangements mediated through apps to avoid paying minimum wages and basic entitlements (such as superannuation). In Australia, after many years of campaigning by workers in the Gig Economy through their unions such as the Transport Workers' Union (TWU), world-leading reforms have been implemented in Australia to address these imbalances. Such experience is indicative of the ease through which AI can be used to enervate the bargaining power of workers, and hence undermine wages.

While these examples provide a stark reminder of how AI can be used to undermine wages, the full implications of AI on wage setting have yet to be seen. We note the concerns raised by the FSU in its submission to this Inquiry in regards to how propriety data and algorithms might be

[19] Kristalina Georgieva, "AI Will Transform the Global Economy. Let's Make Sure It Benefits Humanity", *IMF Blog*, 14 January 2024, accessed: https://www.imf.org/en/Blogs/Articles/2024/01/14/ai-will-transform-the-global-economy-lets-make-sure-it-benefits-humanity
[20] Veena Dubal, "On Algorithmic Wage Discrimination," *Columbia Law Review* (2023): 1929-1992.

used to make decisions about rates of pay, and the impediments to workers being able to access information about how and why pay decisions have been made.

As the FSU elucidates, this extends to the question of pay equity – a matter of substantial concern for the union movement. Some employers have enterprise agreement clauses committing them to internal pay equity, but it is already often difficult to verify compliance, a situation potentially exacerbated by the use of proprietary data and algorithms in the making of pay decisions.[21]

Scholars have noted the very real risk that AI will contribute to the diminishing of well-paid professional jobs, such as we have seen earlier in this report with the work of Jim Chalmers and Mike Quiggin on the potential for 'job polarisation', in which AI will facilitate the creation of a large number of low-paid jobs, squeezing the middle of the labour market.

Some of the most recent scholarship has elucidated how engrained systemic labour market disadvantages can be exacerbated by the use of AI in wage setting. For instance, the Economic Policy Institute in the United States has recently found that the lack of balance between labour and capital on the labour market (due to de-unionisation, the erosion of the federal minimum wage, and macroeconomic policy changes) is what has created the potential for AI to be used to undermine working people's wages.[22]

This is a stark reminder that AI's effects on wages cannot be separated from the broader industrial environment, and the bargaining options that are available to workers. In the Australian context, it is particularly salient to note that restrictions currently exist on collective bargaining that would prevent workers from negotiating on the actual or potential use of AI at work.

[21] Finance Sector Union, *House of Representatives Standing Committee on Employment, Education and Training: Digital Transformation of Workplaces Inquiry* (June 2024).
[22] Josh Bivens and Ben Zipperer, "Unbalanced labor market power is what makes technology—including AI—threatening to workers", *Economic Policy Institute*, 28 March 2024, accessed: https://www.epi.org/publication/ai-unbalanced-labor-markets/#full-report

Monitoring and surveillance

Of growing concern is the substantial number of cases in which AI has been used for the surveillance of workers in intrusive and dehumanising ways, threatening the right to freedom of association. For instance, both domestically and internationally, Amazon's workplace surveillance serves as a pertinent example of the continuum from traditional forms of unwarranted and excessive workplace surveillance to more technologically advanced forms.

International examples abound in which Amazon has engaged in intrusive, dehumanising, and pernicious forms of workplace surveillance. This included the leaking of an internal memo that indicated the company has at various points had plans to invest in new digital systems to monitor union 'threats', has run job advertisements for intelligence analysts to track unionisation efforts, and uses hand-held scanners to track worker movement. Such actions prompted Amnesty International to petition the company to 'genuinely respect the rights of workers to join and form trade unions and to protect the rights of workers who speak out on human rights issues within their workplace.'[23] In early 2024, it was reported that Amazon was fined €32million for 'excessively' monitoring workers through scanners that tracked worker movement in its warehouse in France.[24] In Australia, unions have identified instances in which Amazon has deployed surveillance to directly intimidate and threaten union officials in the course of their representative responsibilities.[25]

In 2023, the Commonwealth Bank was exposed for secret surveillance and data collection on staff. It was widely believed that the Bank was using a system to measure workers' computer

[23] Amnesty International, "IT IS TIME FOR AMAZON TO RESPECT WORKERS' RIGHT TO UNIONIZE", 1 October 2020, accessed: https://www.amnesty.org/es/wp-content/uploads/2023/05/ACT3032042020ENGLISH.pdf; Jason Ray and Shirin Ghaffray, "Leaked: Confidential Amazon memo reveals new software to track unions", *Vox*, 7 October 2020, accessed: https://www.vox.com/recode/2020/10/6/21502639/amazon-union-busting-tracking-memo-spoc; Jay Greene, "Amazon's employee surveillance fuels unionization efforts", *The Washington Post*, 2 December 2021, accessed: https://www.washingtonpost.com/technology/2021/12/02/amazon-workplace-monitoring-unions/

[24] Mahalia Mayne, "Amazon fined €32m for 'excessive' employee monitoring"", *People Management*, 30 January 2024, accessed: https://www.peoplemanagement.co.uk/article/1859274/amazon-fined-%E2%82%AC32m-excessive-employee-monitoring-rights-wrongs-checking-staff

[25] SDA, *SDA Submission to Senate Select Committee on Adopting Artificial Intelligence (AI)*, 10 May 2024, Submission 41, p. 7.

activity to monitor staff, and make judgements on worker productivity.[26] Workers have even been pressured to take leave if the data suggests that they are not being 'productive' enough.[27]

The FSU has noted that its members have reported extensive monitoring from their employers including times when they log on and off; time spent on calls and responding to emails; and key stroke and other forms of activity tracking. This surveillance and monitoring is taking place entirely without worker consent.[28]

We do note that there are forms of non-intrusive surveillance, introduced through consultation with workers, that may play a more positive function in protecting the health and safety of workers. One particularly pertinent example of this has been highlighted by the SDA in regards to its campaign 'No One Deserves A Serve' that tackles the constant abuse experienced by retail and fast food workers from customers. In this context the question of the use of video surveillance and body cams have been raised as a measure of use, and is supported by some workers. Many others have contested this, due to serious concerns about tracking of their faces, movements, and data – a legitimate concern considering the actions of some large retailers.

Associated risks

An associated risk that is not explicitly stipulated in the terms of reference but that has substantial implications for the nature of work is control and ownership of data and creative content. This is an issue that has been extensively canvassed by the Media, Entertainment and Arts Alliance (MEAA).

The vast swathes of data required to train AI has resulted in the appropriation of large amounts of information used by tech companies to 'train' their AI models.[29] Such rampant theft of creative works flies in the face of workers' rights to their image, voice, movement, creativity and

[26] Sarah Sharples, "CBA criticised for secret surveillance of staff and forcing workers to take leave", *News.com.au*, 16 March 2023, accessed: https://www.news.com.au/finance/business/banking/cba-criticised-for-secret-surveillance-of-staff-and-forcing-workers-to-take-leave/news-story/65b223765b4e5e9e17de86a348fa456a
[27] Sarah Sharples, "CBA criticised for secret surveillance of staff and forcing workers to take leave", *News.com.au*, 16 March 2023, accessed: https://www.news.com.au/finance/business/banking/cba-criticised-for-secret-surveillance-of-staff-and-forcing-workers-to-take-leave/news-story/65b223765b4e5e9e17de86a348fa456a
[28] Finance Sector Union, *House of Representatives Standing Committee on Employment, Education and Training: Digital Transformation of Workplaces Inquiry* (June 2024).
[29] The Guardian, Biggest act of copyright theft in history': thousands of Australian books allegedly used to train AI model, https://www.theguardian.com/australia-news/2023/sep/28/australian-books-training-ai-books3-stolen-pirated

intellectual capacity. Moreover, this practise threatens the very core of the arts and cultural sectors and diminishes everyone's right to human-led culture and artistic participation.

It is conceivable that a significant portion of creative and journalistic work could be replaced by generative AI. Digital media – including video production, image generation, photography, the production of news content, and musical composition – can all be replicated to some extent by generative AI models. For example, OpenAI's Sora can produce video content from text prompts; Canva's Murf AI can produce a range of synthetic voices across different tonalities and languages; ChatGPT can produce written news content; and Suno AI can generate musical compositions and vocals. This means that the jobs of those working in the production of these kinds of digital content – including journalists, actors, photographers, set and costume designers and voice artists – are under significant pressure.

Generative AI models are trained on enormous datasets, including news and opinion articles, books, films, musical compositions, and images. These are often scraped from the internet and 'fed' into AI systems without their creators' knowledge, consent, input, or compensation. The current laws do not provide enough protection for creative workers to obtain compensation or opt-out of such use.

In the screen and music industries, the ability for production companies and record labels to create and control digital replicas of artists creates the risk that an artist will be forced to compete against their digital selves or against a 'synthetic' creation who contains characteristics copied from artists.

In news media, journalists are being asked to participate in projects whereby they are directed to record themselves reading aloud a script or an article which is then used to create audio files of articles being read in different languages in the voice of that journalist. Journalists have raised concerns about the journalistic integrity of this practice and the ownership of voice that would be held by the media company.

Ownership of one's image, voice, movement, creativity, and intellectual capacity are intrinsic to any approach that would ensure the viability of art, music, culture and journalism. Workers must be afforded these rights if we are to protect and grow Australia's rich and unique cultural heritage. A group of Australian authors, including prize-winning novelist Richard Flanagan, have

alleged that up to 18,000 books have been pirated by the Books3 AI-training dataset. Flanagan has referred to the incident as 'the biggest act of copyright theft in history'.[30]

A group of Australian artists, including Archibald finalist Kim Leutwyler, have alleged that their work has been scraped for training purposes by AI-training dataset LAION-5B.[31] Leutwyler described the alleged use of the dataset by AI app 'Lensa' as a 'violation', adding that artists had 'not been compensated' and 'not been credited' for the use.[32]

It is clear that current copyright law is not fit for purpose, and that it will need to be reviewed to deal with the broad range of challenges that AI presents.

Other data-related risks exist across industries. For instance, the Australian Nursing and Midwifery Federation (ANMF) has highlighted its concern about the use of AI in healthcare. Medical data is personal and sensitive, and the sharing of large data health repositories to inform machine learning is often done without the permission or knowledge of patients and consumers. If not used with appropriate precautions, free and open-source AI tools can potentially result in health data becoming publicly available.

Potential risks to health and safety

The union movement is also concerned as to the potential risks to workplace health and safety posed by these new technologies – many not yet imagined. This includes the potential psycho-social effects of surveillance and monitoring and the potential health effects of isolation. Working in isolation as the only human worker among a myriad of AI tools can be both psychologically harmful and pose risks of physical harm.

Every worker has a right to a safe and healthy workplace. It is the responsibility of every employer to provide this safe workplace. No form of AI, or any other technology, should be used to allow an employer to obviate this most fundamental responsibility.

[30] Ibid
[31] The Guardian, Australian artists accuse popular AI imaging app of stealing content, call for stricter copyright laws, https://www.theguardian.com/australia-news/2022/dec/12/australian-artists-accuse-popular-ai-imaging-app-of-stealing-content-call-for-stricter-copyright-laws
[32] Ibid.

These workplace health and safety risks operate on a variety of different levels – including the risks to social and psychological wellbeing incurred from surveillance, discrimination, a lack of human oversight in decision-making, and from the denial of meaningful work.

Workplace health and safety laws must be updated to acknowledge and resolve the risks posed by automated decision-making and machine learning techniques.

Opportunities

These risks are real and present dangers to the workplace rights, and inherent humanity, of the working person. But positive examples of how AI can be used to meaningful augment the toil of workers, and to enhance work processes in a positive way do exist. This includes the example of Australian manufacturing, mentioned earlier in this submission.

The use of AI in healthcare, when managed correctly, has demonstrated the potential of new digital technologies and machine learning to be used for the social good. As the ANMF has explained, AI technologies have demonstrated feasibility in improving health outcomes, access to care, and reducing workforce strain. As the Federation cautions though, this is the case only when it augments and assists the work of human practitioners, who are best suited to providing care.[33]

But even here, caution is required. For all the positive developments, the risks mentioned throughout this submission remain. Machine-learning based diagnostic models are dependent on the data that is provided to the model for its learning. If this dataset lacks diversity then the model has the potential to develop biases or blind spots against certain groups, perpetuating inequality and discrimination in health outcomes. Human clinical oversight is necessary through all stages of development and implementation to avoid such risks.[34]

We refer the Committee to the proposals outlined by the Australian Salaried Medical Officers' Federation (ASMOF), the union representing salaried doctors, in its submission to identify and

[33] ANMF, *ANMF Submission to the Select Committee on Adopting Artificial Intelligence (AI)*, May 2024, Submission 30, p. 7.
[34] ANMF, *ANMF Submission to the Select Committee on Adopting Artificial Intelligence (AI)*, May 2024, Submission 30, p. 9.

respond to potential harms of AI in the medical field, and the proposed measures to ensure medical care augmented by AI and overseen by practitioners is delivering positive health outcomes to Australians.

D. The effects of these techniques on the scope of managerial prerogative, labour rights, ability for workers to organise, procedural fairness, equality, discrimination, and dignity at work;

The union movement has deep concerns over the extent to which these techniques can enable de-unionisation, and employer strategies to undermine the collective workplace rights of working people. These concerns are fuelled by extensive examples of large corporations utilising these technologies for such purposes – as has been the example with Amazon, as explained above.

Unions are also concerned at the extent to which these new technologies may be used by some employers to abrogate their responsibilities and the human role in decision-making in what is often termed 'Algorithmic Management'. Unions assert that while AI can assist and augment, it must never replace human oversight of final decision making, especially in matters of hiring and firing. AI systems used in this way create a barrier between people – and can obscure the reasoning behind management decisions, and the evidentiary basis upon which such decisions are made.[35] This is a diminution of procedural fairness, and one in which human values (for example, cultural, contextual and societally constructed meanings) are not adequately factored into important decisions.[36]

Our anti-victimisation and discrimination laws are also woefully inadequate for dealing with the potentially negative effects of AI. The General Protections regime of the Fair Work Act 2009, for example, already has sufficient weaknesses in preventing victimisation and discrimination where a human decision-maker is concerned. It is entirely unequipped to deal with AI based decision-making. Other features of our industrial laws further prevent the ability of workers to have professional input into the adoption of AI which might be contrary to our values as a society. For example, restrictions on enterprise agreement content are such that they are apt to thwart

[35] Evgeni Aizenberg · Matthew J. Dennis · Jeroen van den Hoven, Speech production under uncertainty: how do job applicants experience and communicate with an AI interviewer, *AI and Society*
[36] Evgeni Aizenberg · Matthew J. Dennis · Jeroen van den Hoven, Speech production under uncertainty: how do job applicants experience and communicate with an AI interviewer, *AI and Society*

workers who seek to take a pro-consumer stance in relation to the adoption of AI in their workplaces.

As Associate Professor Alysia Blackham at the University of Melbourne has demonstrated, algorithmic management has significant implications for the experience of discrimination and social exclusion in the workplace. Algorithms are, in effect, a set of instructions to a program on how to process assigned information to formulate an output. This assigned information – datasets – are usually labelled by humans, and reflect embedded biases and inequities that influence the algorithms being developed, and invariably, their results.[37] We have already discussed examples of this dynamic, such as the discriminatory recruitment tool developed by Amazon.[38]

In the context of the rapid development and uptake of automated decision-making and machine learning techniques in the workplace, it is vital that traditional workplace and worker rights are protected in the new environment, and also that new and specific rights devised to protect workers in the new age are identified and implemented. A series of these have already been identified above.

Core to this will be the 'right to know' – a concept informed by the 'right to an explanation', which is contained in Article 86 of the *EU Artificial Intelligence Act*.[39] Openness and transparency about the systems and processes being used, the algorithms by which they are governed, the datasets upon which they are trained, the rationale and intended outcomes behind their implementation, and their performance upon review, must be regarded as a fundamental right of every Australian whose life has been touched by AI – including within the workplace. Current laws do not adequately ensure that this occurs. In fact, presently, a group of workers who refused to work with AI that had harmful effects on citizens would likely find themselves being the ones sanctioned.

All decision-making that affects workers in the implementation and ongoing use of AI in workplaces must be open, transparent, and capable of both internal and external review and

[37] Alysia Blackham, "Setting the Framework for Accountability for Algorithmic Discrimination at Work", *Melbourne University Law Review* 47:1 (2023): pp., 66-67.
[38] Ibid., pp.69-70.
[39] "Article 86: A Right to Explanation of Individual Decision-Making", *EU artificial intelligence Act*, accessed: Article 86: A Right to Explanation of Individual Decision-Making | EU Artificial Intelligence Act

challenge. The right of all workers to an explanation is integral to this, and this right includes ensuring that workers know how, why, and by whom a decision has been made. There must be sufficient transparency to ensure workers understand the decisions affecting them, and to ensure that detrimental impacts are not obscured beneath the guise of technological necessity.

E. Appropriate safeguards or regulatory interventions to guide responsible implementation in the workplace, including the digital skills and resources necessary for employers to appropriately utilise these technologies;

International experience demonstrates that when it comes to adopting AI in workplaces, the most effective safeguard is a strong worker voice [40] According to the OECD's 2023 study, workplaces where there is worker voice that have adopted AI – for example through works councils, trade union representation or health and safety structures – have recorded a reduced probability of certain health and safety risks.[41] This fits within a broader pattern of workplaces which are consulted about the adoption of AI being more likely to report that AI has had a positive impact.[42] The OECD's findings have been reinforced by extensive academic research.[43]

This was similarly the finding of the Essential Research Report conducted for the Human Technology Institute at UTS titled "Invisible Bystanders", which recommended new mechanisms to ensure 'worker voice is embedded in innovation and change is negotiated.'[44] As the repot made clear, unions are the most effective conduit of the worker voice, with a unique capability to 'push for transparent communications, adequate training, and safeguards against potential negative impacts on employees.'[45]

[40] OECD, Social dialogue and collective bargaining in the age of artificial intelligence in 2023 Employment Outlook, https://www.oecd-ilibrary.org/sites/c35af387-en/index.html?itemId=/content/component/c35af387-en, 7.2.2
[41] Ibid
[42] Ibid
[43] For example: Eckhard Vos and Daniel Bertossa, "Collective Bargaining and Digitalization: A Global Survey of Union Use of Collective Bargaining to Increase Worker Control over Digitalization", *New England Journal of Public Policy* 34:1 (2022): 1-35; Ernesto Klengel and Johanna Wenckebach, "Artificial intelligence, work, power imbalance and democracy – why co-determination is essential", *Italian Labour Law E-Journal* 2:14 (2021): 157-171; Virginia Doellgast, Ines Wagner, and Sean O'Brady, "Negotiating limits on algorithmic management in digitalised services: cases from Germany and Norway", *Transfer*, 29:1 (2022): 105-120.
[44] Essential research and the UTS Human Technology Institute, *'Invisible Bystanders': How Australian Workers Experience The Uptake of AI and Automation*, May 2024, 12.
[45] Ibid., 76.

Workers should have real input into decisions that are made about the introduction and use of AI, augmentation of work using AI, automation and other matters affecting them. Workers should be given the information they need to make informed decisions about future changes. Workers in some fields, where the use of AI would be inappropriate or carry undue risk (for example, medical decision-making) should have the right to reject its use completely, in the public interest.

There are a series of simple, practical, and commonsense steps that can be taken in the Australian context to entrench worker voice at the centre of these processes of AI implementation. These include:

- Removing restrictions on collective bargaining to enable workers to collectively bargain on the actual or potential use of artificial intelligence and associated issues (such as data ownership and privacy) in connection with their work.
- Introducing workplace consultation provisions which require those who engage workers to genuinely consult with workers about the potential use of AI in connection with their work, and actively involve workers in decision-making.
- Removing any impediments or barriers to workers determining how workers will interact and work with technology including AI. This may include workers deciding, in the public interest, that they will not adopt AI for certain applications (such as medical decision-making).
- The removal of any barriers on the transparency of how technology will operate, make determinations or recommendations in the workplace.
- The right for workers to challenge decisions made about us and that affect our working lives in the implementation of AI in workplaces.

In addition, we note the need for a deeply entrenched and widely supporter just transition to protect workers from displacement by AI to the greatest extent possible.

This will require federal government action to:

- Ensure that redundancy protections offered I relation to the use of technologies including AI are adequate.
- Examine the current level of social protections available for workers and the unemployed for dealing with the potential effects of AI, and ensuring our social safety net is responsive to the specific needs of workers who lose their positions due to technological change.
- Institute tripartite consultations to explore options for the funding of transitional arrangements for workers in industries most affected by AI.

As it stands, it is too often unclear who has responsibility for the monitoring of risks posed by algorithmic decision-making in workplaces – the employers using these tools, the companies that have developed them, or the workers subject to these decisions (but often unable to influence them). This is an uncertainty that must be resolved.[46]

It is clear from the above that the various risks and harms that the use of AI in a work context is presenting to workers and to the public are too serious to be entrusted to tech companies who appear to operate under a guiding philosophy of 'move fast and break things'. Rather, what is needed is sensible regulation and incentivisation of best practice aligned with human values and goals. All stages of AI's design and implementation – from designing the regulatory framework to deciding on the manner and limits of AIs real-world application require input from workers in order to be effective.

The Australian union movement is calling for a coordinated, national, and unified policy approach that balances innovation, development, risk, regulation and rights. To facilitate this, we call for the establishment of a National Artificial Intelligence Authority to coordinate efforts to develop responsive and responsible regulation and legislation across government.

In terms of the regulatory responses best adopted a number of jurisdictions have indicated the principles that would adopt to guide the development and application of AI. These guidelines have fairly broad similarities in terms of the concerns that they would seek to address. For example, the Australian AI Ethics Principles and the Beijing Artificial Intelligence Principles make explicit statement on the desire to see AI work for the benefit of humans and society. The EU's Ethics Guidelines for Trustworthy AI, the Australian Principes, the Beijing Principles and the US Blueprint for an AI Bill of Rights all contemplate the potential for discrimination and the need to deal with this. The EU and Australian Principles refer to transparency as a necessary feature.

The EU's approach has also included consideration of the level of risk posed by various AI applications, and the need to prohibit certain applications. This is an approach that is worthy of further consideration.

[46] Alysia Blackham, "Setting the Framework for Accountability for Algorithmic Discrimination at Work", *Melbourne University Law Review* 47:1 (2023): pp., 64-65.

Generally, the principles that are being contemplated in overseas jurisdictions are relevant and should inform the Australian approach to AI regulation, as should an understanding that workers' voices must be part of debates and decision-making in relation to AI.

An additional issue is also worthy of consideration, in relation to country of origin of AI applications. It bears consideration that AI developed in overseas jurisdictions may be compliant with those overseas requirements, but not necessarily automatically compliant with local rules. For example, many AI recruitment tools originate in the USA where discrimination and industrial laws are markedly different.

A further problem arises in relation to privacy and data. AI requires and generates massive amounts of worker data. The privacy implications are huge. Workers should have control over their own data and our current privacy laws do not allow for this.

Without addressing these issues, it will be impossible to promote the ethical use of AI.

F. The effects on gender equality, job security, small businesses, Closing the Gap and disadvantaged and vulnerable cohorts of workers.

This submission has already dealt in detail with the risks posed by AI to job security and workers in more vulnerable situations.

This includes job displacement, an inability to access skill development, inability to access education (for instance, lack of home access to computerised technologies that are a pre-requisite for AI training), difficulties in accessing training and development conducted in technical English for those workers for whom English is a second language, and others.

As has been noted by the Media, Entertainment, and Arts Alliance (MEAA), our affiliate, in their submission, a significant proportion of Australians work in non-typical working arrangements, and it is often these workers that are most often governed by platforms that are highly reliant on algorithmic decision-making. Many creative workers, for instance, are gig workers and rely on digital platforms to sell or promote their work.

We are deeply concerned as to the potential effects of discrimination being perpetuated by AI in the workplace. As has already been detailed in this submission, AI poses a substantial risk of perpetuating bias and discrimination. In line with our commitment to a world free of discrimination, we have outlined steps required to tackle the perpetuation of discrimination and

bias in these algorithms. Steps must be taken to ensure that AI is regulated with a view to the elimination of discrimination.

We are particularly concerned that among the jobs to which AI poses a most immediate and direct threat of elimination or augmentation are many in which the workforce is predominantly composed of women. Many jobs that are and have been female dominated will change, many will disappear. This comes in an historic context in which these industries have been undervalued due to the gender composition of their workforces. While there is the strong potential that in these industries, the change that will take place will involve the acquisition of higher-level skills and potentially lead to higher levels of pay, the historic experience of these industries suggests that this will only be the case through conscious intervention.

We also note the specific effects of AI use on Aboriginal and Torres Strait Islander peoples. We restate the potential for AI to perpetuate discrimination and social exclusions, explored in detail above, and the negative effect this may have on Aboriginal and Torres Strait Islander peoples due to embedded discrimination in the labour market.

We have already witnessed cases in which the cultural output of Aboriginal and Torres Strait Islander peoples has been effectively stolen for reproduction by AI. AI is being used to change original content without the consent of artists or remuneration. The Australian union movement affirms the rights of Aboriginal and Torres Strait Islander peoples to govern the collection, ownership and application of data about Aboriginal and Torres Strait Islander communities, peoples, lands, and resources.

Recommendations

The following recommendations are practical and meaningful measures that can be taken to manage the risks and seize the opportunities provided by AI's widespread implementation in Australian workplaces. They are informed by the understanding that new technology, including AI should result in the creation of more jobs, with higher pay, and improved productivity. Wealth generated must be shared with the workers who create it, use it, and shape it.

1. The establishment of a National Artificial Intelligence Authority to ensure a coordinated national and unified policy approach that balances innovation, development, risk, regulation, and rights.
2. Workers should have real input into decisions that are made about the introduction and use of AI, augmentation of work using AI, automation and other matters affecting them.

To ensure a genuine and meaningful worker voice in the AI transition, it is necessary for:

- Restrictions on collective bargaining be removed to enable workers to collectively bargain on the actual or potential use of artificial intelligence and associated issues such as data ownership and privacy) in connection with their work.
- Workplace consultation provisions to be introduced which require those who engage workers to genuinely consult with workers about the potential use of AI in connection with their work.
- Any impediments or barriers to workers determining how they will interact and work with technology including AI to be removed. This may include workers deciding, in the public interest, that they will not adopt AI for certain applications (such as medical decision-making).
- Any barriers on the transparency of how technology will operate, make determinations or recommendations in the workplace, are removed.

3. To address the substantive occupational health and safety implications of the AI transition, it is necessary for the Commonwealth and State Governments to ensure that:
   - Workplace health and safety laws sufficiently capture the risks and harms, including psychosocial risks and harms that can arise from working with or being subjected to the use of artificial intelligence in connection with work (for example, risks to health and safety – including psychosocial wellbeing – from work intensification, reduced autonomy and lower job control).
   - Workplace health and safety laws, regulations and guidelines adequately address the responsibilities of persons controlling business or undertaking and persons who create AI and other technologies for use in connection with work.
   - Workers who are injured in the course of their employment are not subjected to artificial intelligence-based decision-making in connection with their seeking or relying on accident compensation.
4. That the government institute regular tripartite consultations aimed at promoting the safe and responsible use of artificial intelligence in order to harness its potential for positive effects on productivity, workplace health and safety and, meaningful work and avoid its negative effects.
5. It is necessary to ensure that the framework of industrial laws are sufficiently robust to deal with the use of artificial intelligence in connection with work. This will require the government engages with unions to ensure that the following areas are fit for purpose in the AI transition:
   - General Protections, Discrimination, unfair dismissal and related laws sufficiently place responsibility for decisions on organisations and individuals who engage and administer labour, including where decisions are made or influenced by artificial

intelligence programs. Accessorial liability should also be strengthened to ensure that providers of technologies, including AI, which lead to unfair or discriminatory outcomes may also be held responsible.

- All decision-making, including decision-making using AI, which affects workers must be open, transparent and capable of both internal and external review and challenge. The right of all workers to an explanation is a critical component of this and should ensure that workers know how, why, and by whom a decision has been made. There must be sufficient transparency to enable workers to understand decisions affecting them, including the circumstance of their making, to ensure that such decisions are not discriminatory.

6. The development and institution of a Charter of Rights for workers with respect to the use of technology, including robotics, AI and automation generally, in connection with work.
7. The institution of a 'Introduction of Change' regime that will ensure workers are consulted before final decisions are made, that guarantees the workers' right to training, and to ensure that employers cannot use technical complexity to obscure decisions that affect workers.
8. The establishment of a new Division of the Department of Employment and Workplace Relations to oversee the development by tripartite means of new regulation and training as it pertains to AI and work.
9. Action by the government to:
   - Ensure that redundancy protections are adequate in the case of redundancies arising from or in connection with the use of technologies, including AI.
   - Examine the current level of social protections that exist for workers and the unemployed, with a view to ensuring that these are adequately capable of dealing with the potential effects of technology, including AI, on the labour market. There should be a safety net for workers whose jobs are lost due to technological changes.
   - Convene tripartite consultations to explore options for the creation and funding of transitional arrangements to assist workers and industries that are affected by the potential for automation or augmentation of work arising from AI or other new technologies. There should be Government funding to ensure that workers are not left behind and are adequately compensated as industries transition to increased automation and digitisation.
10. Government action to put in place adequate safeguards to ensure that where artificial intelligence is used in the delivery of Government services, this does not:
    - Displace the importance of human decision-making.
    - Lead to negative outcomes for those who use those services.

11. Government action to examine and where necessary amend the existing consumer protections framework to best protect consumers where they interact with or are subjected to decision-making or processes that involve artificial intelligence.
12. Government action to examine and where necessary amend existing privacy protections for workers and for other persons, taking into account the issues presented by artificial intelligence.
13. Government action to implement legislation that protects Aboriginal and Torres Strait Islander peoples intellectual and cultural knowledges against the threat of AI.
14. Government action to ensure that international trade agreements and other obligations do not limit its ability to regulate the use of artificial intelligence in the public interest.
15. Government action to ensure, through its procurement, modern slavery, and other regulations, that workers in the supply chains that are used to create and train artificial intelligence models are afforded minimum rights and standards.

Conclusion

The Australian union movement is aware of the substantial positive benefits for our workplaces from automated decision-making and machine learning techniques if the transition and implementation is managed correctly. This means ensuring that workers' voice is centred in all stages of the planning, implementation, and review of these processes. This requires genuine and meaningful consultation, and the right to rejection where the introduction of these techniques is demonstrably in violation of industrial law, workplace health and safety, or denigrates the public interest.

But the union movement is also aware of the existential threat that these technologies can pose to Australia's fair go if they are not managed correctly. The nature of work will change. These technologies, if not correctly regulated, could act to exacerbate social inequality. We have already seen that AI is currently being used in ways that undermine workers' rights and further entrenches and perpetuates discrimination.

Workers must be involved in every level of the debate over AI. This submission has focused on the vital questions concerning the world of work. But our lives as working people will not just be shape by how AI is used at the workplace – but how it is used throughout society. And so too do we need a say about the broader changes that will take place as a result of these technologies.

AI can change the world for the better if we get the transition right. The trade union movement is dedicated to ensuring we get it right as a country by ensuring that the benefits of these

technologies are enjoyed by all, and not just a few. Australia can, and must, lead the world in worker-centric approaches to AI policy that recognise and entrench the fundamental right to dignity at work at the core of the transformation that will take place.

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