



# SDA SUBMISSION TO THE COMMONWEALTH GOVERNMENT COVID-19 RESPONSE INQUIRY

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Submitted by: Gerard Dwyer  
National Secretary-Treasurer



# About the SDA



The Shop, Distributive and Allied Employees' Association (the SDA) is one of Australia's largest trade unions with around 200,000 members. Our members work in retail, warehousing, fast food, hairdressing, beauty, pharmacy, online retailing, and modelling.

The majority of SDA members are women (60%, approximately 131,000), under 35 years (57%, approximately 120,000 workers), and low-income. Retail and food services are two of the three lowest industries for median weekly earnings.

The SDA has a long history of advocating on behalf of members. We do this through enterprise bargaining; making submissions regarding Awards and the NES to provide a relevant safety net; and through numerous submissions made to parliamentary and government inquiries and other important reviews.

Safety at work is also a significant focus for our union. Every worker has a fundamental right to a workplace that is healthy and safe and SDA members rank safety as one of the most important issues for them at work.

The SDA was very active throughout COVID-19 to ensure the health and safety of our members was protected and they were not left financially vulnerable.

The SDA has 10 policy principles that guide our engagement in these reviews. For a list of these, see Appendix A.

# Executive Summary

COVID-19 had a significant impact on SDA members. Some were impacted by lockdown and the closure of their stores resulting in the standing down of thousands of retail workers across the country. Those not impacted by lockdown and store closures became some of the most exposed frontline workers in the country who provided the essential service to our community throughout the pandemic of the provision of food, goods, and services, whether by working in distribution centres, online fulfilment, delivery or by serving customers in stores.

Without the ability to work from home our members went to work facing potential exposure to COVID-19. If working in store settings, they were faced with an additional risk to their health and safety as abuse and violence from customers increased as they dealt with:

- heightened customer anxiety,
- stock shortages, and
- enforcement of health directives such as mask mandates, limits on customer numbers and QR codes/sign in on entry.

SDA members also experienced an increase in workload and work intensity. Many of these hazards have not abated since.

Retail and fast-food industries are highly casualised and insecure. This meant that many of our members were vulnerable during COVID, either due to the inability to access government support if stood down, or sick leave if they contracted COVID or had to isolate due to a health direction. COVID-19 shone a light on insecure work, how vulnerable those workers are and the inequities it creates between workers in our workplace relations and social security systems.

COVID-19 also highlighted our unpreparedness as a nation for events such as pandemics. The SDA had to take an early lead on securing safe COVID-19 work practices across retail and fast food, and bringing industry and employers in to ensure these workplace practices were implemented, in the absence of timely and proper direction from Safe Work Australia and WHS regulators.

In addition to our Retail and Fast-food COVID-19 Safety Plans, the SDA also called on employers to introduce policies and procedures to deal with workers who contracted COVID-19 or had to isolate, pregnant workers and those workers that the Australian Health Protection Principal Committee (AHPPC) nominated as vulnerable workers. We also called on employers to introduce paid pandemic leave when workers contracted COVID-19 or had to isolate under health directions. The SDA was very successful in securing paid isolation leave for workers in many companies across retail.

The SDA also called for government support for workers who were stood down and those workers who contracted COVID-19 or had to isolate. Similar to the response to workplace safety, as a nation we were ill-prepared to protect workers from the financial impacts of COVID-19, such as through access to legislated workplace entitlements and government support payments.

While the terms of reference for this inquiry are broad, the focus of our submission will be on worker health and safety and the lack of industrial rights and entitlements that left them exposed financially, leading to a less resilient workforce. We need to ensure that the lessons learnt from COVID-19 instruct our preparedness for future pandemics, including the introduction of new laws and regulations.

The SDA provides some recommendations and supports the submissions and recommendations of the ACTU.

# Recommendations

## Recommendation 1

Introduce a WHS regulation on biological hazards (which would include pandemics), into the Model WHS laws and a supporting Code of Practice.

## Recommendation 2

The establishment of an Australian Centre for Disease Control (ACDC), as soon as possible to address problems seen in national management of the COVID-19 pandemic. This should be independent of government and overseen by members appointed by both the Commonwealth, state and territory governments, as well as unions and employers, to ensure that the specific risks associated with workplaces are incorporated in prevention measures.

## Recommendation 3

That the government introduce a broad support payment which can be enlivened following a government direction such as lock down in the event of a pandemic, which causes the cessation of work.

## Recommendation 4

That the NES be amended to include Paid Pandemic Leave providing all workers who contract a virus or must self-isolate in accordance with a public health order with paid leave.

# Submission

## Workplace Health and Safety

1. SDA members were essential workers throughout the pandemic. Given the nature of their employment they were not able to pivot to work from home so continued to go to work each day. They shouldered the responsibility of ensuring that people had access to the food, medicines and goods they needed to survive through COVID-19, albeit at a greater risk to themselves and their families.
2. In the initial phase of the pandemic there was little information available in relation to workplace controls that were needed to keep workers safe and reduce their exposure to contracting the virus. At this time, members were experiencing stress and anxiety about their safety at work.
3. The SDA took the lead on this and developed a 10-point COVID Safe Plan for retail and fast-food, which we called on employers to adopt and implement. At this time, there was no clear advice from Safe Work Australia or WHS regulators in relation to appropriate controls, particularly those relating to specific industries.
4. The SDA also took the lead on consultation between the relevant stakeholders to develop and ensure implementation of appropriate workplace health and safety controls. Consultation by government and WHS agencies and regulators improved over the COVID-19 period and when commenced they were effective.
5. Australia's Work, Health and Safety legislative framework was not sufficient for the immediate response that was necessary when the pandemic was declared, and the response was too slow to ensure that workers health and safety was sufficiently protected. This left the workforce highly exposed.
6. Issues also arose in relation to the interaction between public health orders and WHS. There was often confusion by employers in relation to public health orders and WHS obligations. Many employers focused on public health orders for guidance on how to manage COVID-19 rather than by conducting risk assessments and implementing the most effective measures to control the hazard in that workplace. This was even more evident as public health orders relaxed, employers took this as the cue to relax workplace control measures which was not necessarily consistent with the risk assessment at the time.
7. Workers in retail and fast food also became the enforcers of public health orders such as mask mandates, customer number limits, contact-tracing check-in/QR code and checking of vaccination status which increased the risk of customer abuse and violence towards them. A survey conducted by the SDA at the end of 2020 found that 1 in 5 workers had been coughed or spat on during COVID-19 and 70% of respondents said abuse and violence was more frequent.
8. There needs to be clear WHS laws governing employer and PCBU obligations during a pandemic or in relation to other biological hazards, and how they continue to operate alongside public health orders to ensure the safety of workers. This must also include consultation, by employers directly with workers, and also through the relevant stakeholders, including employers and registered worker representatives.
9. We must ensure that we are properly prepared for future pandemics and related incidents, which requires the introduction of a regulation on biological hazards, which would include

pandemics, into the model WHS laws, requiring employers and PCBUs to consult with workers, undertake risk assessments and implement a hierarchy of controls to manage the risks. This should be supported by a Code of Practice on managing biological hazards, including the risks associated with pandemics.

### **Recommendation 1**

Introduce a WHS regulation on biological hazards (which would include pandemics), into the Model WHS laws and a supporting Code of Practice.

10. The SDA and the businesses operating in the industries our members work in who have national operations also faced issues in relation to managing the different requirements across the states at the commencement and throughout COVID-19. This also had an impact on the management of the health and safety of workers.
11. The SDA supports the submissions of the ACTU in relation to the national coordination of public health advice:

### **Recommendation 2**

The establishment of an Australian Centre for Disease Control (ACDC), as soon as possible to address problems seen in national management of the COVID-19 pandemic, which is independent of government and overseen by members appointed by both the Commonwealth, state and territory governments, as well as unions and employers, to ensure that the specific risks associated with workplaces are incorporated in prevention measures.

## **Vulnerable and insecure workers – better support for workers**

12. Retail and fast-food industries are highly casualised and insecure. COVID-19 highlighted the vulnerability of insecure workers, both financially and in relation to their health and safety.
13. COVID-19 also highlighted that our workplace relations and social security systems are not prepared for events such as this and that mechanisms need to be built into our systems that can be enlivened if, and when these events occur. This is vital so that the appropriate systems can be designed when we have the time to consider them properly and not during a crisis situation.
14. Building worker entitlements and government supports into our workplace relations and social security systems, to be enlivened if a pandemic is declared, will protect the financial security of workers and provide more effective future proofing of our economy. It will also provide a more resilient workforce in times when it is needed most.
15. There were two main issues that impacted SDA members at the commencement and during the pandemic. The first was in relation to lockdowns and store closures, requiring the stand down of thousands of SDA members. This resulted in workers being left financially vulnerable, particularly casual workers and those with no leave available.
16. The SDA, along with the broader union movement called on the government to introduce

support payments for impacted workers. While we commend the action of the Morrison government to introduce JobKeeper payments, the lack of universal access to the payment left too many workers unable to access this vital financial support.

17. Narrowing the coverage to regular and systematic casuals with at least 12 months service left many SDA members working in retail unable to meet the eligibility criteria, often through no fault of their own. Given the unpredictable nature of rostering in retail and fast food, many members who were long term casuals, some more than 10 years, were deemed ineligible by their employer because they had had some absences in the previous 12 months, either due to rostering or due to illness, or other forms of time off.
18. This led to many disputes between the SDA and employers in relation to the question of eligibility, which if eligibility was universal, or there was greater clarity around eligibility for casuals, the questions in dispute would not have arisen.
19. Others impacted by this questionable eligibility criteria were migrant workers, many of whom were systematically employed and heavily reliant on their income from employment.
20. To ensure that workers are better supported in future from an event such as COVID-19, there should be a mechanism introduced for support payments to commence immediately following a government direction such as a lock down, that causes the cessation of work. The scope of payments should be broad and not exclude casual and migrant workers.
21. This would provide the opportunity for the design of the scheme to be considered without the pressure of time or urgency, which should result in a more effective and targeted scheme which can assist with our preparedness for any future pandemic and to more effectively future proof our economy.

### **Recommendation 3**

That the government introduce a broad support payment which can be enlivened following a government direction such as lock down in the event of a pandemic, which causes the cessation of work.

22. The second issue that impacted SDA members was the exposure to contracting COVID-19 or having to comply with health directions to self-isolate when coming into contact with someone with COVID-19.
23. The only entitlement available to employees at the commencement of COVID-19 was personal leave and that was only enlivened when someone was ill because they contracted COVID-19. Although some employers extended the use of Personal Leave to circumstances where employees had to self-isolate, this was not universal.
24. Personal Leave is also only available to permanent employees, and those who had enough accrued to cover periods of absence. In a retail and fast-food context, this left many workers without any entitlement to payment for periods of absence, either because they were casual and had no entitlement to personal leave or they did not have enough accrued leave.
25. The lack of an entitlement to paid time away from work due to contracting or being exposed to COVID-19 led to a less resilient workforce as workers were forced to make a decision between:
  - a. following government directions and keeping others safe, and forgoing an income, or

b. working on regardless and maintaining some income.

For many SDA members who live week to week option (a) was punitive and left them vulnerable.

26. When workers continue to work with a virus like COVID-19 due to financial necessity, a whole workforce can be exposed leading to more workers needing time off or having to close down a workplace.
27. The SDA was successful in getting many employers in retail and fast food to introduce Paid Pandemic/Isolation Leave Policy's. This was in addition to an employee's Personal leave and typically included payment for time off when absent from work due to contracting COVID-19 or self-isolating in accordance with a public health order. In many cases this was also extended to casuals.
28. The SDA believes that this should have been a universal & mandated entitlement. Employees who continued to go in to work during the pandemic should not have been financially impacted when they contracted the virus or when they were exposed to it. It is also arguable that it is needed as a workplace health and safety measure to ensure that workers are supported to comply with public health orders which not only protect the community broadly but also protects those in workplaces. It also makes good business sense as it protects the workplace from exposure to the virus.
29. Access to leave should not have been ad hoc and up to each employer, it should have been a universal entitlement. While we acknowledge that some State Governments introduced support payments for workers who lost income because of the public health orders, this came late and did not fully compensate for a loss of income.
30. In order to ensure that workers are better protected and supported in the future, universal Paid Pandemic Leave should be introduced into the NES which should provide all workers who contract a virus or must self-isolate in accordance with a public health order with paid leave.
31. This entitlement would only be enlivened when the government declares Australia is in a pandemic.

#### **Recommendation 4**

That the NES be amended to include Paid Pandemic Leave providing paid leave to all workers who contract a virus or who must self-isolate in accordance with a public health order.





## Appendix A: Rationale for SDA policy positions

SDA policy is driven by providing value to our members whose work is regulated by a system that has been failing them for decades.

Australians need to be supported by an economic system that has working people at its center. Our predecessors built an industrial system which provided the foundations for shared prosperity. It is now our responsibility to modernise the industrial framework for the current and future generations.

The world of work has changed and will keep changing. There is an unprecedented intersection between work and care. Income and gender inequality have combined to increase disadvantage. Predictable, secure hours of work that provide a living wage are at the centre of decent work. But, there has been growth in insecure work, digitalisation is now a matter of course, and safety concerns have persisted.

We believe that fundamental not incremental change is needed. In contributing to policy, we seek to drive a new system that acknowledges the change that has occurred and will withstand the emerging world of work.

We engage in topics that help us drive this agenda and are guided by ten principles that we believe will create value for our members. Those principles are:

- 1. Address Inequality & Enshrine Fairness**  
Minimum expectations must be set and adhered to.
- 2. Equity & Empowerment**  
All workers must be supported to progress so that no-one is left behind.
- 3. Mobility & Security**  
A socially successful economy must provide opportunity for all, regardless of their background. Systems must be built in a way that support success and adaptation in a rapidly changing world of work.
- 4. Delivering Prosperity & Growth For All**  
A foundation for prosperity and economic growth must be achieved.
- 5. Protection in Work & Beyond**  
Workplaces and the community must be healthy and safe for all workers and their families during and beyond their working lives.
- 6. Workers Capital & Superannuation**  
Workers capital and superannuation must be an industrial right for all workers and treated as deferred earnings designed for dignity and justice in retirement.
- 7. A Strong Independent Umpire**  
A strong, independent, cost effective and accessible industrial umpire and regulator must be central to the future system of work in Australia.
- 8. Protection & Support for Our Future**  
Protecting and supporting our future requires a strong and vibrant retail industry and supply chain providing jobs with fair and just remuneration and contributing to the economy including through skilled workers.
- 9. Work & Community**  
Work is a fundamental human activity that provides for personal, social and economic development. Work as it operates in community must build and protect a balance between work and life so that workers can contribute to society through the wider community.
- 10. Institutional Support for Collective Agents**  
Institutional support must provide for collective agents (registered organisations) so that they are recognised, enshrined and explicitly supported as central to the effective functioning of the system.

Details of specific policy positions can be discussed by contacting the SDA National Office.

