



SDA SUBMISSION TO

Introducing mandatory guardrails for AI in high-risk settings: proposals paper

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About the SDA



The Shop, Distributive and Allied Employees' Association (the SDA) is one of Australia's largest trade unions with over 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%), under 35 years (57%), 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.

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



SDA Submission to Introducing mandatory guardrails for AI in high-risk settings: proposals paper

There are conditions in which the AI, digitisation and automation can result in a fairer system of work, including where:

- institutions respond effectively to rapid economic change,
- the benefits are shared through
 - improved opportunities for developing skills and
 - improved workplace wages and conditions,
- legislation is responsive to the human impact and acknowledges the pace of change, and
- workplace cultures embrace AI for augmentation, not replacement, of work.

Any “Mandatory guardrails for AI in high-risk settings” should facilitate that objective. Without the objective being facilitated, a significant social and economic risk may be realised. Working people – the backbone of our society, will again be let down by transition.

In response to “Safe and responsible AI in Australia Proposals” paper for introducing mandatory guardrails for AI in high-risk settings - September 2024”, the Shop, Distributive and Allied Employees’ Association (SDA) offers these three responses:

1. **The definition of “high risk” should include systems of work.** That is, mandatory guardrails for Ai, should reduce risk of harm related to the employment relationship, including those that relate to supervision or management, such as rostering and communications with workers.

There is a need for roster justice, where workers are supported to avoid the collision of work and care. Workers should not be subject to last minute, unexpected changes to their working hours, and they should be properly consulted on rosters by their employers. Where a roster is arranged by Ai, human oversight is needed to be able to understand the situation and provide just rosters. Further, rostering apps are used in the context of minimum cost rostering, which means where there is sick staff or last minute changes, the staff who are on shift incur significant workload impacts. Forthcoming research from the SDA into workload will be provided to the Department of Industry

Science and Resources once published.

The short-term impact of change is often overestimated while the long-term change is often underestimated.¹ So there is a risk that the definition of “high risk” is focused on short-term, shocking and important risks (such as deep fakes), rather than on large scale economic and social risk such as the way work operates in the lives of the majority of Australians.

- 2. The mandatory guardrails “proposed principles” are currently limited to individuals or cultural groups. This must be amended to be consistent with Article 22 of the International Covenant on Civil and Political Rights, which includes the right to form and join trade unions.** Freedom of Association requires protection of the Right to Organise, not just by virtue of ‘culture’.

One article from November 2020 indicated that Amazon’s “global surveillance of its workforce could be in breach of Australia’s right to assemble laws.”² That said, the use of surveillance to curtail workers’ freedoms needs to be balanced with the desire of workers for similar technologies to be used for other matters, such as safety.

One such safety issue is customer abuse and violence. Video surveillance footage and body cams are contested in retail workplaces. Some workers want them so that there is evidence after events and for their role in preventing incidents of violence. Others are concerned about the tracking of their faces and movements for the collection of data or monitoring of activities. Given the documented behaviour of some retailers, that is a reasonable concern.

The guardrails for use of Ai need to deal with concerns regarding surveillance and what is recorded, how it is retained and how it is communicated in these contexts.

¹ “We always overestimate the change that will occur in the next two years and underestimate the change that will occur in the next 10. Don’t let yourself be lulled into inaction.” Bill Gates, *The Road Ahead* (Penguin Books, 1996).

² <https://www.theguardian.com/australia-news/2020/nov/25/amazons-reported-surveillance-of-workers-couldbreak-australian-law-union-says>

3. Of the regulatory options provided, **the preferred option is *Option 3: A whole of economy approach – Introducing a new cross-economy AI-specific Act (for example, an Australian AI Act)***. This and *Option 2: A framework approach – Introducing new framework legislation to adapt existing regulatory frameworks across the economy* provide the context in which to set guardrails for AI that would best protect the rights of workers. The benefit of Option 3 – an AI Act – is the greater level of coordination, emphasis on developers as well as deployers of AI systems with enforceable regulation.

Whichever option is chosen, it should be designed to reinforce Australian law. In rostering and payroll technology, Australian domiciled companies regularly cite their IT systems as a barrier to implementation of Australian workplace conditions protected under law. For example, long service leave and annual leave loading are frequently cited as ‘complexities’, but they are long standing conditions in Australian workplaces and deployers of the technology cite the design system as a barrier to implementation. It is unacceptable that technology is used complicitly or explicitly to avoid Australian law. Australian workplace law – including long service leave and other bargained conditions such as super on unpaid parental leave – simply must be complied with.

The Mandatory Guardrails should be designed to reduce risk of AI implementation applying the lowest international standard to working people in Australia.

This option allows for the regulatory context to include that:

- **Work allocated by software must not do damage to workers, and if it does there is accountability to a person or company.**
- **A right to inspect the systems and their outputs, so that workers and their unions can access information to enable implementation of workplace and other law.**

In conclusion, the SDA notes the research, submissions and appearances for and of workers in retail warehousing and fast-food as listed below.

Research

SDA in house research and research partnerships support these positions. In the case of “Challenges of work, family and care”, the use of technology for rostering showed that workers are experiencing a collision of work and care including being treated as an on demand workforce even when part-time or consistently engaged for shifts. If people are impacted by technology and its implementation, there must be human oversight.

Research in which the SDA is engaged related to the technology includes:

- Carnovale, A. (2020), *Technology in Workplaces: Impact on the Retail Industry*. (Unpublished)
- Cortis, N., Blaxland, M., and Charlesworth, S. (2021) *Challenges of work, family and care for Australia’s retail, online retail, warehousing and fast food workers*. Sydney: Social Policy Research Centre, UNSW Sydney. (Available at <https://national.sda.com.au/care/>)
- Lipton, B., Vromen, A., Rutledge-Prior, S., Good, L., Cooper, R., Foley, M. (2023) *Technology and skills in the future of retail work: A summary of findings* (Available at <https://ses.library.usyd.edu.au/handle/2123/29372>)
- Podkalicka, A. and Andrejevic, M. (Forthcoming) *Workers in Transition: Automating Retail* (Unpublished, details available at <https://autoworkproject.org/sale-and-service/>)
- Zerbib, F., Connor Wherrett, C., and Cavanough, E. (Oct 2021) *Reshaping Redundancy: For the Automation Age* (Available at <https://mckellinstitute.org.au/research/reports/rethinking-redundancy/>)

Submissions

Submissions made by the SDA, which consider the role of AI and other technology on the economy and workforce:

- SDA Submission to the Select Committee on Adopting Artificial Intelligence (AI)
 - 10 May 2024

- <https://www.aph.gov.au/DocumentStore.ashx?id=a8039a36-a14a-45a7-ac17-12adff675630&subId=756353>
- SDA Submission to the Select Committee on Supermarket Prices
 - 13 March 2024
 - <https://www.aph.gov.au/DocumentStore.ashx?id=a8f9d0c0-ee54-4dce-90b9-abac2a0c4c72&subId=753688>
- SDA Submission to the House of Representatives Standing Committee on Employment, Education and Training
 - Inquiry into the Digital Transformation of Workplaces
 - 28 June 2024
 - <https://www.aph.gov.au/DocumentStore.ashx?id=689a13ba-f575-4c21-bea5-481facab422a&subId=759642>

Appearances

Appearances by the SDA, including the voices of workers at fully and partially automated supermarket supply chain fulfillment and distribution centres and a reference to use of surveillance to impinge on civil and political rights:

- Standing Committee on Employment, Education and Training - 02/09/2024 - Inquiry into the Digital Transformation of Workplaces
 - SMITH, Mr Bernie, New South Wales Branch Secretary and Treasurer, Shop, Distributive and Allied Employees Association
 - MAARTENSZ, Ms Sally, Team Member, Distribution centre
 - ANUSHKA, Ms Anushka, Team Member, Coles Customer Fulfilment Centre Truganina
 - DYRENFURTH, Dr Nick, Executive Director, John Curtin Research Centre
 - https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=committees/commrep/28343/&sid=0003
- Select Committee on Adopting Artificial Intelligence (AI) - 21/05/2024 - Adopting AI
 - MITCHELL, Mr Joseph, Assistant Secretary, Australian Council of Trade Unions

- SMITH, Mr Bernard (Bernie), Secretary, New South Wales Branch, Shop, Distributive and Allied Employees Association
 - CAUGHLEY, Mr Vince, Secretary, New South Wales Division, National Tertiary Education Union
 - KEMPPI, Mr Sunil, Senior Legal and Industrial Officer, Australian Council of Trade Unions
 - BOUTROS, Mr Jack, Campaigner, Transport Workers Union of Australia
 - https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=committees/commsen/27986/&sid=0005
- Select Committee on Supermarket Prices - 15/04/2024
 - SMITH, Mr Bernard Joseph, New South Wales Branch Secretary, Shop, Distributive and Allied Employees Association
 - COONEY, Ms Helen, Principal Policy Officer, Shop, Distributive and Allied Employees Association
 - https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=committees/commsen/27890/&sid=0006

Appendix A: Principles underpinning SDA policy positions

SDA policy is driven by providing value to our members whose work is regulated by an industrial system that has been reformed but had failed them for decades.

Australians need to be supported by an economic system that has working people at its centre. Our predecessors built an industrial system which provided the foundations for shared prosperity. It is now our responsibility to utilise the reformed industrial framework for the current and future generations. Decades of concerted attacks on our industrial relations system saw inequality grow, and economic and political power has further concentrated in the hands of a few.

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, safety concerns have persisted, and automated, digital and generative technologies must be shaped to enhance, not undermine, decent work.

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 be fit for purpose in the emerging world of work.

The SDA engages in topics that help drive this agenda and we 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 decent work and 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 life at 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) in all industries 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.

