



**SDA SUBMISSION TO THE REVIEW OF THE
WORKPLACE GENDER EQUALITY ACT 2012**

Gender Equity in Australia

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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 210,000 members. Our members work in retail, fast food, warehousing, 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.

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



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Executive Summary

The SDA welcomes the opportunity to make a submission to the Review of the *Workplace Gender Equality Act 2012* into whether the WGEA has appropriate powers, tools and levers to achieve the objectives of the Workplace Gender Equality Act, including to promote and improve gender equality in Australian workplaces, support employers to remove barriers to the full and equal participation of women in the workplace and to eliminate discrimination on the basis of gender in relation to employment matters.

Gender equality in society and particularly in Australian workplaces is not improving; in fact, it is in sharp decline¹, particularly in relation to women's economic participation measures, despite gender equality being fundamental to a healthy and productive economy.

To improve gender equality in Australia, we need a broad range of legislative reforms including improvements to parental leave entitlements for all parents; a legislated right to care instead of a right to 'ask' for flexible working arrangements; gender equality as an objective of the Fair Work Act; mechanisms to remedy the undervaluation of female dominated industries and occupations; and free and accessible childcare.

Robust, effective, outcomes and action-based gender equality reporting is also an important tool to drive change. However, the current reporting framework is failing to drive the change needed to improve gender inequality. While the collection of quantitative data is extensive and from that perspective world leading, the lack of qualitative data or reporting on outcomes rather than lag indicators, and without requirements for organisations to be proactive and create, implement, and monitor action plans, we are failing to see improvements that reporting frameworks in other nations are achieving.

The SDA strongly supports the *Workplace Gender Equality Act (WGEA) 2012* and the continued obligation on companies to provide public reports, however, the current framework is not robust or proactive enough to achieve improvements in gender equality within organisations or across the Australian economy.

Recent research the SDA commissioned by the University of NSW Social Policy Research Centre demonstrates the clear disconnect between what is reported to WGEA and the outcome for workers. Without the power to enforce the legislation and measure outcomes (rather than the mere existence of a policy) and without any accountability requirements or action plans, organisations will continue to fail to achieve the improvements in Gender Equality Australia needs.

The SDA makes several recommendations to strengthen the powers and functions of the WGEA and broaden the tools and levers it has to achieve the objectives of the Workplace Gender Equality Act, to improve gender equality in Australian workplaces, support employers to remove barriers to the full and equal participation of women in the workplace and to eliminate discrimination on the basis of gender in relation to employment matters.

The SDA also supports the submission of the ACTU.

¹ Global gender equality index 2021

Recommendations

The SDA recommends that WGEA be appropriately funded to be able to perform all its powers and functions and additional funding must be provided following this review and any expansion of its powers and functions.

Consistent with Recommendation 43 of the Respect at Work Report, the SDA recommends that the Act be amended to require public sector organisations to report to WGEA.

The SDA recommends that all private business including labour hire, regardless of size, should be required to report to WGEA.

The SDA recommends the following broadening and strengthening of the reporting framework:

- Requiring all reporting organisations to have a policy and strategy in place to support **all gender equality indicators as a minimum requirement to meet the minimum standard**.
- **Extending the requirement to report on minimum standards to all reporting organisations**, not limited reporting organisations with 500 or more employees.
- Require employers to **take positive corrective action** against all the GEIs, as well having as policies and/or strategies.
- Empower an appropriately qualified body or bodies to conduct **detailed remuneration and gender equity audits** where needed to measure actual year on year progress towards gender equity against outcomes-based Minimum Standards.
- **Introduce financial penalties for failing to report or providing inaccurate or misleading responses.**
- **Extend disaggregated data required for all GEI questions to include occupations** the company reports against, rather than just manager/non-managers.
- Require employers to consult with employees and their unions on measures to improve gender equity; and to report on the action taken as a result of such consultation.

The SDA recommends that Section 1 of the *Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1)* be amended to require employers to report on measures to support Gender Equality policies and strategies such as leadership and mentor programs and that all GEI data be provided by gender, employment status, manager/non-manager and by work location e.g. in retail this should include support/head office and stores.

The SDA recommends that Section 1 of the *Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1)* be amended to require employers to report on the number and proportion of employees who are terminated or made redundant, by gender, employment status and manager/non-managers.

Section 14 of the *Workplace Gender Equality Act 2012* should be amended to require the WGEA to publish organisational leave remuneration and gender pay gap data.

The SDA recommends that Section 3 of the *Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1)* be amended to require employers to report disaggregated data on the actual earnings of part-time and casual employees as well as the number of hours employees are engaged, for managers and non-managers by gender, age and by workplace profile categories, instead of full-time equivalent annual earnings.

The Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1) should be amended to require employers to provide remuneration data for Chief Executive Officers (CEOs) or the equivalent.

The Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1) should also be amended to require employers to provide remuneration data for labour hire staff used in the reporting period.

The SDA recommends that the *Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1)* be amended to require the reporting of annual superannuation payments (disaggregated by gender for managers, non-managers, and by employment status) separate to the full-time annualised total remuneration.

The SDA recommends that other data on superannuation also be expanded to include questions about the Superannuation Guarantee rate applied by gender, employment status and manager/non-manager or other measures to boost female superannuation balances.

Recommendations for GEI4:

The SDA recommends that more data should be collected in relation to flexible work, support for employees with family and caring responsibilities and parental leave, particularly in relation to access and usage, including the eligibility period for access and average lengths of usage of both paid and unpaid employer provided parental leave by manager/non-manager, occupation, carer and employment status.

The SDA recommends that data be collected in relation to eligibility requirements to access flexible work (who, length of service etc.) and whether the policy includes a substantive right to a working arrangement or roster that accommodates caring and family responsibilities.

The SDA recommends that organisations be required to analyse and provide data on the cohorts of workers who are not accessing supports, and why, and to report on changes they will make to improve access.

The SDA recommends that employers be required to report on the number of refusals of requests for flexible work or roster changes for the purpose of caring or family responsibilities or in relation to family violence.

The SDA recommends that employers should be required to report the date the policy they are reporting on was most recently updated and confirm it meets at least minimum legislative requirements.

The SDA recommends that data collected on superannuation be expanded under GEI 4 and that there should be mandatory reporting on the payment of superannuation to employees while on parental leave including while in receipt of the government Parental Leave Payment, employer funded paid parental leave and unpaid parental leave period. The data should also be disaggregated to provide sight of access and eligibility. This information should be a mandatory reporting requirement.

The SDA recommends that data provided under the GEIs also be disaggregated by occupations reported on e.g., for retail industry employers it would include data on access to these for sales workers compared to support office based employees.

The SDA recommends that the requirement to provide disaggregated data should also be applied to the policies and non-leave based measures to support employees with family or caring responsibilities, and employees who have or are experiencing family or domestic violence.

The SDA recommends that employers be required to report on working time security and rostering policies and procedures, and whether these support employees with caring and family responsibilities and doesn't indirectly discriminate against those workers.

The SDA recommends that employers be required to consult with employees and their unions on measures to improve gender equity; and to report on the action taken as a result of such consultation.

The SDA recommends the urgent implementation of the Respect@ Work recommendations relating to WGEA and that when considering the good practice indicators for measuring and monitoring sexual harassment prevalence, prevention and response, the following data be required:

- Do you have a policy and complaints process in relation to sexual harassment?
- Does the policy or strategy recognise sexual harassment and discrimination is driven by gender inequality and that the policies contain actions aimed to address this?

- Does the policy require reporting sexual harassment complaints and outcomes to the board, where applicable?
- Provision of training, including method and frequency disaggregated by manager/non-manager?
- How many sexual harassment complaints were received during the reporting period?
- What were the outcomes of the complaints (substantiated/unsubstantiated)?
- Have the complainants continued in their employment?
- What preventative actions have been taken to ensure sexual harassment doesn't happen again?

The SDA recommends that data collection be expanded to include data by age, disability, cultural and linguistic diversity, identifying as LGBTIQ+, Aboriginal or Torres Strait Islander descent and work location.

Section 14 of the *Workplace Gender Equality Act 2012* should be amended to require the WGEA to publish remuneration reported to WGEA, that is, organisational level gender pay gap data.

The SDA recommends that Section 3 of the *Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1)* be amended to require employers to report disaggregated data on the actual earnings of part-time and casual employees as well as the number of hours employees are engaged, for managers and non-managers by gender and by workplace profile categories, in addition to full-time equivalent annual earnings.

The *Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1)* should also be amended to require employers to provide remuneration data for Chief Executive Officers (CEOs) or the equivalent.

The *Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1)* should also be amended to require employers to provide remuneration data for labour hire used in the reporting period.

The SDA recommends that the *Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1)* be amended to require the reporting of annual superannuation contributions (disaggregated by gender for managers, non-managers, and by employment status) separate to the full-time annualised total remuneration.

The SDA recommends that the data sets available be improved by providing relevant calculated totals.

The SDA recommends that the minimum standards should apply to all reporting organisations regardless of size and that compliance with the minimum standards be linked to outcomes rather than the existence of a policy or strategy.

The SDA recommends that the WGEA be given greater powers of enforcement under the Act, including the power to issue financial penalties on relevant employers who are required to report but fail to do so and who are non-complaint for other reasons under the Act.

The SDA recommends that Section 16A of the Act be amended to require relevant employers to inform employee associations it has lodged its report **and** provide them with a copy of the report.

The SDA recommends that employers be required to consult with employees and their unions on measures to improve gender equity; and to report on the action taken as a result of such consultation.

The Act should be amended to include powers for WGEA or another appropriate body to conduct remuneration and gender equity audits to ensure policies, strategies and action plans are being implemented as reported with the ability to issue compliance notices requiring actions to be taken.

Gender Equity in Australia

1. Australia is not performing well when it comes to gender equity. *The World Economic Forum's 2021 Global Gender Gap Index* ranks Australia 50th out of 156 countries². Australia is ranked 4th in East Asia and Pacific behind NZ which is ranked 1st in our region and 4th in the global ranking and behind the Philippines (2nd in our region and 17th globally) and Laos (3rd in our region and 37th globally)³.
2. Australia has dropped 11 places in 3 years, since 2018⁴ and in 2006 Australia was ranked 15th⁵.
3. The 2018 Global Gender Index Report found that '*Australia (39) records a slight widening of its gender gap on legislators, senior officials and managers as well as some reversal of progress on wage equality, resulting in a slight drop in rank*'⁶.
4. Australia is ranked number 1 for educational attainment, a ranking which has not changed since 2006. Despite maintaining this ranking over this period, we have seen a worsening in our overall ranking from 15th to 50th and our ranking on all other measures, including economic participation and opportunity (from 12th in 2006 to 70th in 2021), health and survival (57th in 2006 and 99th in 2021) and political empowerment (32nd in 2006 and 54th in 2021)⁷.
5. The sharp decline in ranking on economic participation and opportunity is of particular concern as this contributes greatly to overall gender equality, particularly workplace gender equality. Women's workforce participation also significantly impacts economic growth. In 2012, the Grattan Institute found that if there were an extra 6 per cent of women in the workforce, we could add up to \$25 billion, or approximately 1 per cent, to Australia's Gross Domestic Product (GDP).⁸
6. If education is not the issue, the key factors contributing to our worsening gap are structural barriers and discrimination.
7. Per Capita's, *Measure for Measure: Gender Equality in Australia* report found that '*As global gender equality assessment tools have become more sophisticated and detailed, Australia's performance has been revealed to be on a slippery slope of decline. While other countries invest in national gender policy, target setting, data monitoring and evaluation to satisfy international commitments and drive excellence in gender equality, Australia is getting left behind. Once a global leader in gender equality, Australia now finds itself frequently behind most OECD nations.*'⁹

² World Economic Forum, *Global Gender Gap Report 2021*, Insight Report March 2021 p 103

³ Ibid, Table 1.3, p 30

⁴ World Economic Forum, *Global Gender Gap Report 2018*, p 10

⁵ Ibid, p 103

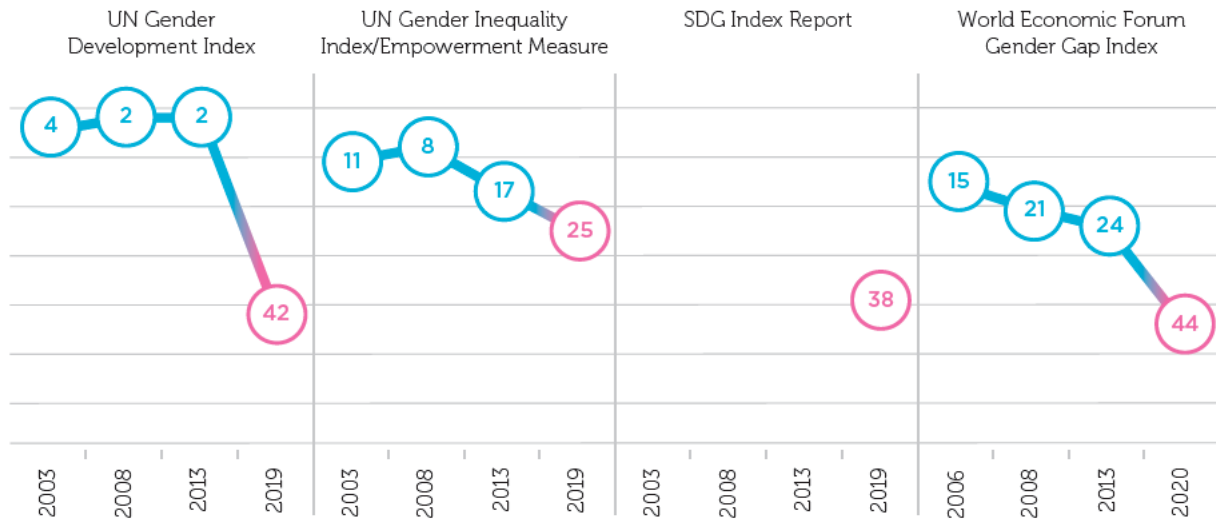
⁶ Ibid, p 103

⁷ Ibid, p 103

⁸ Daley, J., McGannon, C., and Ginnavan, L. 2012, *Game-changers: Economic reform priorities for Australia*.

⁹ Per Capita, *Measure for Measure: Gender Equality in Australia*, March 2020, p 11

Snapshot of Australia's Current International Gender Equality Performance



percapita
PROMOTING WELLBEING IN AUSTRALIA

8. Gender inequality persists in Australia in many ways. The gender pay gap remains stubborn, hovering between 13% and 19% for the past two decades, and a recent increase of 0.8 percentage points (pp) to 14.2% since November 2020 (13.4%) and adding the part-time workforce, the total earnings gender pay gap for all employees widens to 31.3%. This means women's average weekly total earnings are \$486.20 less per week than men¹⁰. The recent increase in the gender pay gap may be indicative of the disproportionate impact that the pandemic has had on women's participation in work and in care.
9. Gender inequality over the course of a woman's lifetime also has an enduring impact on their economic outcomes which stretches into retirement. Women's superannuation balances at retirement are 47% lower than men's¹¹. 40% of older single retired women live in poverty and experience economic insecurity in retirement¹². Older women are one of the fastest growing groups represented in the national homeless population.
10. Women's participation in paid work continues to be below that of men. Women continue to be held back from participating in paid work as they continue to shoulder the responsibility for unpaid care in Australian society, and as a result are much more likely than men to work part-time, on a casual basis or flexibly. This is also evident in the fact that women are much more likely to use primary parental leave than men who make up only 6.5% of people who take primary carer paid parental leave.
11. This is exacerbated by the current structural settings in the parental leave frameworks which embed gender stereotypes by implying the role of a parent as either primary or secondary and in most cases the primary role falls to women, long beyond the birth of the child.
12. Limited participation in work, the gender pay gap, and the resultant inequality of economic outcomes for women over their working lifetime and even more starkly in retirement are also caused by pervasive and persistent workplace discrimination.
13. In 2016, the KPMG report *She's Price(d)less: The economics of the gender pay gap*, found that 'Despite significant advances in lifting women's participation in the labour force and women's pay across industries, and an increased recognition of the value of diversity in the workplace, the gender pay gap continues to persist.'¹³

¹⁰ Workplace Gender Equality Agency, *Australia's Gender Pay Gap Statistics*, 27 August 2021 [Australia's Gender Pay Gap Statistics](#) | WGEA

¹¹ Hetherington, D. and Smith, W., *Not So Super, For Women: Superannuation and Women's Retirement Outcomes* [2017], Per Capita, p 6

¹² [The Facts About Women and Super - Women in Super](#)

¹³ KPMG, *She's Price(d)less: The economics of the Gender Pay Gap*, October 2016, p 2

14. While there are many factors driving the persistent gender pay gap in Australia, the key one is discrimination. The KPMG report showed that sex discrimination not only continues to be the single largest factor contributing to the gender pay gap, but it is worsening with systemic discrimination remaining a persistent feature of the workforce. The proportion of the gender pay gap that is attributable to gender discrimination increased from 35% in 2007 to 38% in 2014.¹⁴
15. A report commissioned by the SDA on how our members manage work and care, which we provide detail on in this submission, found that our members are discriminated against because of their caring and family responsibilities and this discrimination particularly impacts on how female SDA members participate in work, their access to the hours they need and access and opportunities for progression.
16. Reporting requirements under the *Workplace Gender Equality Act 2012 and Workplace Gender Equality Instruments (Indicators 2013 and Minimum Standards 2014)* relate to ways in which discrimination on the grounds of sex and care or family responsibilities can be overcome, such as parental leave, flexible work and supporting family responsibilities. However, despite employers reporting they have these policies and supports in place, they either reflect legislative obligations which are ineffective in driving gender equality or they are often not implemented appropriately to provide any practical improvement in gender equality or to prevent discrimination based on gender or carer status.
17. The next most significant contributing factor in the gender pay gap is industrial and occupational segregation, collectively representing 30% of the gap.¹⁵ The report found that the representation of men in particular industries and in occupations continues to have an effect on wages, with earnings in occupations and industries with a larger share of males being higher than wages for female dominated industries and occupations.¹⁶
18. Unfortunately, undervaluation of female dominated industries and occupations are embedded in our industrial system and the mechanisms to remedy this are ineffective.
19. To improve gender equality in Australia, we need a broad range of legislative reforms including, improvements to parental leave entitlements for all parents; a legislated right to care instead of a right to 'ask' for flexible working arrangements; gender equality as an objective of the Fair Work Act; improved mechanisms to remedy the historical undervaluation of female dominated industries and occupations; and free and accessible childcare.
20. In a recent study of the gender pay gap reporting in six countries, Australia received the joint-lowest ranking and found that 'without higher level of transparency and minimum requirements related to outcomes (rather than policies), Australia risks falling further behind other countries as a place where women will continue to face economic insecurity and inequality across their lifetime'.¹⁷
21. With improvements to the reporting framework which broaden the coverage of organisations and reportable measures under the Act, introduce penalties for non-compliance, and focus on action based outcomes which need to be evidenced, the Workplace Gender Equality Act must drive improvement in gender equality in Australia.

¹⁴ Ibid, p 13

¹⁵ Ibid

¹⁶ Ibid, p 13

¹⁷ Glennie M, von Reibnitz A, William J, Curtis S, Bordia S, 2021. *Gender pay gap reporting in Australia – time for an upgrade*. The Australian National University: Canberra, p 7

Gender Equality in our Industries

22. Our members work predominately in retail, fast food, and warehousing. The WGEA data for the retail trade shows that retail employs more women (57.4%) than men (42.6%), however, females are poorly represented in managerial roles making up only 37.9% of senior managers, 43% of other managers, 28.9% of key management personnel and only 13.6% of CEOs and 20.9% of board positions¹⁸. This indicates that there are significant barriers to progression for women working in retail.
23. There is also a significant difference in the way that women and men are employed in the retail sector with women workers underrepresented in full-time sales roles (44.7%) and over-represented in part-time sales roles (66.8%).
24. The full-time total remuneration gender pay gap for all workers in retail trade is 13.8%, extending to 22.5% for managers.
25. Earlier this year, the SDA commissioned the University of Sydney Social Policy Research Centre to survey our members in relation to their experience in managing their work and care. *The Challenges of work, family and care for Australia’s retail, online retail, warehousing and fast food workers*¹⁹ report was published in October. The report was based on the survey responses of 6469 SDA members.
26. The report found that SDA members make valuable contributions through the unpaid labour they provide as parents, and carers to children and adults in their families and communities. Overall, 55% of survey respondents provide regular care to a child or an adult, however this was higher for women (60%) than men (43%). The most common form of care was providing care to a child under 18 years (39%) and 30% of all participants were parents of a child under 18. Older SDA members also provide care to grandchildren (17%) and young SDA members are providing regular care to siblings and adults with disability or long-term illness.
27. SDA members provide more complex care compared to all Australian workers²⁰:

	Australia (ABS)	SDA survey participants
Care for an older person or person with disability	11%	24%
Sole parents	14% of families	25% of parents
Parent of a child with a disability	7.7% (children <15 with a disability)	16% (children <18 with a disability)
Young carer’s (<25, provide regular care to elderly, person with disability)	5.6%	13%

28. Despite this valuable social and economic contribution, it is poorly recognised and poorly supported in their working lives.
29. The report also found that the lack of support for workers with caring responsibilities has a disproportionate impact on women as they shoulder a higher burden of care and without the appropriate support from employers, this is creating a barrier for women’s access to suitable and sufficient working times, and career opportunities and progression. This is having a negative impact on gender equality and unless this changes, it will continue to hold back any progress on gender equality in retail and fast food.

¹⁸ [WGEA Data Explorer](#)

¹⁹ 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: UNSW Social Policy Research Centre.

²⁰ Ibid, p 22

30. The policies that retail and fast food organisations report they have, do not support workers, particularly women in the way they are presented in reporting or as they are supposedly intended. Options may be available formally, but they are not accessible in practice. Many employees struggle to access the 'options' detailed in policy because of poor workplace cultures which continue to support systematic discrimination, and fear of the repercussions that will flow if they dare ask for their care responsibilities to be supported in the workplace. Unfortunately, as demonstrated in this report, the actual workplace practices are completely invisible in the WGEA reporting.
31. The report found that the needs of workers, including parents and carers is being unmet by employers, employment regulations and the childcare system. Work time arrangements are characterised by short, fluctuating hours and precarious shifts and rosters, for both casual and permanent workers. Workers are penalised for their caring responsibilities and fear repercussions in the form of lost hours and opportunities. This is impacting the labour supply of workers, creating a barrier to work which is impacting on the health, wellbeing and financial security of workers and their families. This is at odds with the fact that most of the employers of members surveyed report that they have policies in place in relation to flexible work, supporting workers with family and caring responsibilities and parental leave.
32. The full report can be found at [Challenges of work, family and care for Australia's retail, online retail, warehousing and fast food workers | SDA Union](#) and the Executive Summary is attached to this submission. We will highlight some of the data further in this submission.
33. The report also found that *'For employers, policy makers and regulators, the findings serve as a reminder that as well as contributing to the economy and society through their paid work, employees make essential and valuable contributions of unpaid care work, which families and communities depend on, and which paid work must be organised to support. **While large companies in Australia are required to have and report on their gender equality policies, such as flexible working arrangements and supports for workers with family responsibilities, our findings show these policies are not delivering benefits to low-paid workers and their families.**'*²¹
34. Following the publication of the main report, the University of NSW Social Policy Research Centre was commissioned by the SDA to produce a confidential companion report *Challenges of work, family and care: Employer Analysis – Data Report*²². The purpose of this report was to provide a breakdown of the survey data by employer and compare the data with the publicly available reports provided by the main retail and fast food companies to the Workplace Gender Equality Agency (WGEA) for the 2019-20 period.
35. **Please note** that the SDA will be providing the report in a separate and confidential submission to the Review.

²¹ Ibid, p 93

²² Cortis, N. and Blaxland, M. (2021) *Challenges of work, family and care: Employer Analysis – Data Report*, Social Policy Research Centre, UNSW Sydney

The key findings of the companion report:

36. ***'Employers' reports to WGEA about the supports they offer to employees with family and caring responsibilities are at odds with employees' own accounts reported in the survey.'***²³
37. Like other large organisations, these retail and fast food employers reported having a series of measures in place in 2019-20 to support employees to manage work and family, and to promote gender equality. However, measures differ among employers.
- *Women dominate non-managerial roles but are underrepresented in managerial positions across large retail and fast food employers.*
 - *The measures employers have in place are undermined by the high use of casual employment.*
 - *Other than one of the major employers studied, the main retail and fast food employers have a policy or strategy in place to support employees with family and caring responsibilities. The major supermarket chains and department stores reported a wider range of supports. It is unclear how many staff had genuine access to organisational supports, and whether these were available to large groups of frontline workers.*
 - *All major employers other than two offered employer funded paid parental leave for primary carers in 2019-20. Only two offered employer funded paid leave for primary carers for at least 14 weeks (which is recommended by the ILO).*
 - *Over a quarter of managers in two department stores ceased employment before returning from parental leave.*
38. When considering the survey responses and the company reports to WGEA, the companion report found that ***'Together, the material shows divergent accounts of work, family and care expressed by retail and fast food companies, and the workforce. The 'official' picture provided to Australia's regulatory authority for workplace gender equality shows organisations have in place a series of measures to promote gender equality and support workers to manage their work, family and caring lives. However, in the survey, SDA members provided accounts which suggest these measures are poorly attuned with their needs, and the needs of their families. Workers are involved in a range of caring relationships and report that the working time arrangements available to them do not accommodate their caring responsibilities.'***²⁴
39. One of the main employers considered in the report has also recently been awarded an Employer of Choice for Gender Equality. The employer meets the markers for the policies and strategies in place but there is no assessment of outcome which raises a question of the validity of the Employer of Choice process.
40. The divergence of the survey data and data reported to WGEA is evidence that the WGEA framework is not meeting the objectives under Act and needs broadening and strengthening so that it can properly assess the gender equality outcomes of organisations and mandate ways to improve.
41. We will expand on this more fully in response to Consultation question 4.

²³ Ibid, p 5

²⁴ Cortis, N. and Blaxland, M. (2021) *Challenges of work, family and care: Employer Analysis – Data Report*. Social Policy Research Centre, UNSW Sydney, p 5

Consultation Questions

Question 1

Are the functions and powers of WGEA appropriate for promoting and improving gender equality in the workplace?

How effective is WGEA in achieving its functions to promote and improve gender equality in the workplace including by enabling relevant employers to report on the gender equality indicators, developing benchmarks and reports, undertaking research, education and leading practice programs and contributing to the public discussion on gender equality?

42. The current powers and functions of WGEA in its current form are clearly not effective in achieving gender equality in Australian workplaces and the economy more broadly.
43. The WGEA collects one of the largest gender equality data sets in the world, however, the data collected does not provide a sufficient measure of gender equality measures utilised by employers, limiting the ability of the WGEA to appropriately measure change and improvement. The lack of data on outcomes and the power to audit reports and require action to be taken is a barrier to promoting substantive equality and closing the gender pay gap.
44. The Act does not contain broad enough reporting requirements. All employers should report against all indicators and standards. There should be penalties for non-reporting. There should be an implementation requirement to ensure that action plans, policies and strategies are actively in place and are achieving the desired outcome.
45. The data and benchmark reports that WGEA produce are useful, however, the time lag for uploading the reports onto the WGEA website and publishing benchmarks and other information inhibits the ability for stakeholders to engage with employers in a timely way following lodgement of reports.

Recommendation:

The SDA recommends that WGEA be appropriately funded to be able to perform all its powers and functions and additional funding must be provided following this review and any expansion of its powers and functions.

We will detail some of the current limitations and recommendations to address them further in the submission.

Question 2

What is your experience of what works to improve gender equality in your workplace?

How do you currently engage with WGEA and use the reporting process and their resources to improve gender equality?

What changes, if any, would you like to see in the areas of future focus for WGEA to further promote and improve gender equality over the next ten years?

46. Our submissions in response to this question relate to our capacity as a trade union and how we engage with WGEA reporting for the purpose of representing our members.
47. We use employer reports and industry benchmark data to facilitate a review of the existing policies, measures and supports that the companies our members work for provide to their employees. This assists us to check what they are reporting to WGEA and so that we can have access to the policies and procedures that impact on the practical outcomes for our members.
48. We also use the information for the purpose of negotiations, enforcement of entitlements and in discussions with companies to advocate for continual review and improvement, and to ensure they are being implanted effectively. We also use the WGEA reports to push for greater consultation.
49. As a minimum and as a matter of urgency, the SDA recommends that the focus should be on implementing the recommendations of the Australian Human Rights Commission *Respect@Work Report*.²⁵

Recommendation 42:

The Workplace Gender Equality Agency work with the Workplace Sexual Harassment Council to consider how good practice indicators for measuring and monitoring sexual harassment prevalence, prevention and response may apply to reporting in relation to sexual harassment under the *Workplace Gender Equality Act 2012*.

Recommendation 43:

The Australian Government:

- a. Amend the *Workplace Gender Equality Act 2012* to require public sector organisations to report to the Workplace Gender Equality Agency on its gender equality indicators.
- b. Fund the Workplace Gender Equality Agency adequately to meet these expanded reporting obligations.

²⁵ Australian Human Rights Commission, *Respect@Work Report: National Inquiry into Sexual Harassment in Australian Workplaces*, 2020, p 57

Question 3

Should the coverage of the Workplace Gender Equality Act be further changed?

Specifically, should the definition of ‘relevant employer’ be expanded?

If so, would additional considerations need to be factored in for new reporting employers?

50. Currently, under Section 3 of the Act ‘relevant employer’ means a registered higher education provider or an employer of 100 or more employees in Australia; not including the Commonwealth, a State, a Territory, or an authority. This is too narrow and excludes far too much of the workforce.
51. Australia fares unfavourably regarding the scope of coverage of its gender equality reporting legislation. The threshold for employer size is notably higher than in most comparator countries, and to date the public sector is excluded. WGEA reported that its dataset covered only 40.3% of the estimated overall Australian workforce in 2019/20 (WGEA, 2020a).²⁶ This is far too low thereby negatively impacting the agency’s ability to accurately determine the best measures and programs to achieve gender equality.
52. Workplace Gender Equality Agency Corporate Plan for the 2021-25 period includes a target to enable reporting by the public sector with a Program for mandatory public sector reporting operational by 22-23.²⁷

Recommendation:

Consistent with Recommendation 43 of the Respect at Work Report, the SDA recommends that the Act be amended to require public sector organisations to report to WGEA.

53. The threshold for private sector employers is also too high and limits the coverage of relevant employers and the workforce impacting the ability for the reporting framework to deliver substantive change. Gender equity should be prioritised, not only because it is important for the participation and progression of women workers but also because it contributes to improvements to business and economic outcomes more broadly.
54. While some organisations and employers will have objections to expanding coverage of reporting requirements to smaller organisations due to the perceived burden on business, the benefit of expanding the coverage of the reporting requirements and its potential impact on driving down the gender pay gap and gender inequality in the workplace is evidenced by the fact that *‘There is a higher proportion of women in lower earning categories for smaller organisations (<100 employees) compared to larger organisations. This highlights the relatively advantaged population of employees represented in larger organisations that fit within the current reporting threshold. It also highlights that a segment of the labour force with the highest gender pay gap is not covered by gender equality reporting legislation.’*²⁸

²⁶ Glennie M, von Reibnitz A, William J, Curtis S, Bordia S, 2021. *Gender pay gap reporting in Australia – time for an upgrade*. The Australian National University: Canberra, p 19

²⁷ Workplace Gender Equality Agency Corporate Plan for the 2021-25 period, page 12

²⁸ Glennie M, von Reibnitz A, William J, Curtis S, Bordia S, 2021. *Gender pay gap reporting in Australia – time for an upgrade*. The Australian National University: Canberra, p 20

55. A reporting framework that continues to exclude the segment of the labour force with the highest gender pay gap embeds a significant structural barrier to achieving a reduction in the gender pay gap. The reporting requirements should apply to all employers (public and private) against all indicators and standards.

Recommendation:

The SDA recommends that all private business including labour hire, regardless of size, should be required to report to WGEA.

56. To facilitate this, the WGEA will need to be appropriately funded to support the increased administrative workload.
57. There may also need to be consideration of a phased approach for new reporting employers.

Question 4

Are the gender equality indicators (GEIs) in the Workplace Gender Equality Act, and the data collected with respect to the GEIs, appropriate to promote and improve gender equality?

How could they be improved?

58. We make submissions below in relation to specific Gender Equality Indicators (GEI) and will provide some overarching comments in relation to the type of data collected and the powers the WGEA has in relation to how they use the data to promote gender equality.
59. Under the current reporting requirements organisations must simply indicate the existence of a policy in place under each GEI. There is no requirement to disclose the content. There is no minimum standard they must meet to be able to say 'yes' to having a policy. In our experience, organisations have reported 'yes' to having a policy or strategy in circumstances where the policy doesn't even comply with legislative obligations and employee's legal rights and entitlements. This style of reporting fails to provide any indication of the quality of the policy, its implementation, or its effectiveness. In many ways the reporting framework serves largely as a tick and flick exercise. It does not provide a necessary trigger for review of the outcomes they generate, or the improvements needed. A framework to measure outcomes and a more proactive, action-based response to those outcomes is needed. Each year, a relevant employer should be expected to improve on the previous year, whether it be in relation to the actual gender pay gap or the measures in place to achieve gender equity.
60. A recent report by the Australian National University found that *'Australia contrasts with international comparison countries in quantifying the number of gender policies rather than disclosing and/or negotiating their content. Although this facilitates comparison across firms, it limits the capacity for stakeholders to hold individual employers accountable for the quality and implementation of their gender policies.'*²⁹
61. This is evidenced by the fact that despite large numbers of employers reporting they have policies in place to support the GEI's such as sex-based harassment and discrimination, flexible working arrangements, and support for employees with family and caring responsibilities we see an overall decline in the outcomes for women workers in relation to these issues.
62. The Act currently only requires organisations to disclose policies, procedures, and some outcomes. The Act provides no mechanism for the Agency to require corrective action by organisations who may fail to meet minimum standards or to require evidence to demonstrate implementation and outcome of policy. *'Australia compares poorly with regard to the obligations of employers to correct inequalities.'*³⁰
63. If no corrective action is mandated there is no accountability for organisations to do any more than have policies in place. This doesn't address persistent gender inequality.
64. There are international examples of gender pay gap reporting frameworks which require more positive action such as France and Spain, both of which require organisations to create action plans and negotiate them with unions or employee representatives.

²⁹ Glennie M, von Reibnitz A, William J, Curtis S, Bordia S, 2021. *Gender pay gap reporting in Australia – time for an upgrade.* The Australian National University: Canberra, p 24

³⁰ Ibid, p 26

65. In March this year, the Victorian Government introduced the *Gender Equality Act 2021* which aims to improve workplace gender equality in the Victorian public sector, universities, and local councils. Under the Act, organisations have a series of duties over a period including a duty to promote gender equality and assess the state and nature of gender inequality in their workplaces using a workplace gender audit. Organisations must submit a Gender Equality Action Plan every 4 years to the Public Sector Commissioner for Gender Equality, which must include the results of the workplace gender audit, to assess the current state of gender equality in the workplace and strategies and measures to improve gender equality in the workplace, based on the results of the audit.
66. This model is action based and requires improvements and the implementation of measures towards improvement over time, which can be measured. The Review should consider the benefits of the Victorian model and comparative international models.
67. The reporting framework needs broadening and strengthening to ensure that outcomes are measured and there is a process that requires action to improve outcomes.

Recommendation:

The SDA recommends the following broadening and strengthening of the reporting framework:

- requiring all reporting organisations to have a policy and strategy in place to support **all gender equality indicators as a minimum requirement to meet the minimum standard**.
- **extending the requirement to report on minimum standards to all reporting organisations**, not limited reporting organisations with 500 or more employees.
- require employers to **take positive corrective action** against all the GEIs, as well having as policies and/or strategies.
- empower an appropriately qualified body or bodies to conduct **detailed remuneration and gender equity audits** where needed to measure actual year on year progress towards gender equity against outcomes-based Minimum Standards.
- **introduce financial penalties for failing to report or providing inaccurate or misleading responses**.
- **extend disaggregated data required for all GEI questions to include occupations** the company reports against, rather than just manager/non-managers.
- require employers to consult with employees and their unions on measures to improve gender equity; and to report on the action taken as a result of such consultation.

GEI 1: Gender composition of workforce and GEI 2: Gender composition of governing bodies of relevant employers

68. In relation to gender composition of the workforce, the *Challenges of work, family and care for Australia's retail, online retail, warehousing and fast food workers* report (the report) found that employment in major retail and fast food workplaces is gender segregated as women are underrepresented in managerial positions yet dominate managerial roles.³¹
69. One of the key issues highlighted by the report is that workplace discrimination based on family and caring responsibilities, coupled with insecure and unpredictable rosters, is impacting women's work participation and career opportunities within the industry.
70. 28% of members turn down work activities or opportunities because of caring responsibilities, this is higher for parents (47%) and even higher for parents of children with a disability of additional needs (64%) and sole parents (53%).³²
71. Workers, in particular women, and businesses are missing out on work and career opportunities because of poor management practices, poor design and implementation of policy and inadequate gender equality strategies.
72. Parents spoke about missing out on work activities and opportunities including promotions and career progression because of their caring responsibilities.
73. Parents of 0-12 year old children were given an opportunity to comment on the difficulties they have had with childcare but also commented on their ability to work sufficient hours, or to take up career opportunities. This limited their earnings and career progression.³³

"I live in a small community and there is only 1 option for vacation care. This runs for only 25 hours a week during holidays, which means I have to lose out on work." (Sole mother, permanent part-time)

"I currently work school hours but am unable to apply and take an offered management promotion because finding childcare for early morning starts or late finishes is hard." (Sole mother, carer of adult with disability, permanent part-time)

"It's hard to be career oriented when you have children to take to school and to look after a disabled elderly person." (Partnered father of child with disability, permanent part-time)

"I feel there is very little opportunity for me as a mum."

"I was even told that I wasn't being hired at one business because I am still within the child bearing years, they don't want to deal with a possible pregnancy and maternity leave."

74. This is having an impact on the ability for female frontline workers progressing from sales roles to management and is a significant barrier to achieving a more equal gender composition in retail.
75. In addition to the fact that policies to support parents and carers, including flexible work, exist but are not assisting to remove barriers to opportunities to work participation and progression, the SDA also finds that overall gender equality policies and programs are also failing to promote gender equality for front line workers.

³¹ Cortis, N. and Blaxland, M. (2021) *Challenges of work, family and care: Employer Analysis – Data Report*, Social Policy Research Centre, UNSW Sydney, p 9

³² 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: UNSW Social Policy Research Centre, p 105

³³ 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: UNSW Social Policy Research Centre, p 39

76. Gender Equality Policies and programs to support this, such as those designed to give women the skills and opportunities to develop into management and leadership positions are typically targeted to support or head office, professional based roles and seldom designed to provide greater gender equality across store level management or supervisory roles. Gender equality in front line workplace settings is often ignored and forgotten.

Recommendation:

The SDA recommends that Section 1 of the Workplace Gender Equality (*Matters in relation to Gender Equality Indicators*) Instrument 2013 (No. 1) be amended to require employers to report on measures to support Gender Equality policies and strategies such as leadership and mentor programs and that all GEI data be provided by gender, employment status, manager/non-manager and by work location e.g. in retail this should include support/head office and stores.

77. The other issue women face is discrimination, especially during pregnancy and providing early parental care. This widespread discrimination will often result in women losing hours of work, being demoted, or indeed being dismissed from their job or being made redundant.
78. In 2014 the Australian Human Rights Commission conducted a national inquiry into the nature and prevalence of pregnancy and return to work discrimination. *‘Overall, the Survey’s findings demonstrate that discrimination towards pregnant employees and working parents remains a widespread and systemic issue which inhibits the full and equal participation of working parents, and in particular, women, in the labour force’.*³⁴
79. *‘Despite longstanding prohibitions against pregnancy/return to work discrimination, the National Review found that it is pervasive. One in two (49%) mothers reported experiencing discrimination in the workplace at some point’.*³⁵
80. *Women experienced different types of discrimination in the workplace ranging from ‘negative attitudes and comments from colleagues and managers, through to loss of opportunities for further training and career advancement, reduction in pay and conditions, as well as redundancy and job loss’.*³⁶
81. Currently, the Workplace Gender Equality (*Matters in relation to Gender Equality Indicators*) Instrument 2013 (No. 1), requires employers to report on the number and proportion of employees who have resigned by gender, employment status and manager/non-manager. As discrimination on the basis of sex and caring or family responsibilities can result in termination and redundancy, the WGEA should require employers to report on the number and proportion of employees who are terminated or made redundant, by gender, employment status and manager/non-managers.

Recommendation:

The SDA recommends that Section 1 of the Workplace Gender Equality (*Matters in relation to Gender Equality Indicators*) Instrument 2013 (No. 1) be amended to require employers to report on the number and proportion of employees who are terminated or made redundant, by gender, employment status and manager/non-managers.

³⁴ Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Inquiry* 2014, p 8

³⁵ Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Inquiry* 2014, p 8

³⁶ *Ibid*, p 8

GEI 3: Equal remuneration between women and men

82. Relevant employers are required to report remuneration data to WGEA; however, the gender pay gap in each organisation is not publicly reported. The only pay data which is publicly available is aggregated data at the industry level. Transparency of organisational level gender pay gap data is essential for measuring the gender equity performance and improvement of an organisation. It is also essential to embed a level of transparency and accountability within organisations to ensure they are taking action to monitor and reduce the gender pay gap. Importantly, this measure can be used to influence an organisations broader gender equity strategies and policies which are a means of driving down the gender pay gap.
83. The UK publicly reports organisational level gender pay gap data and there is emerging evidence that this is influencing consumer behaviour, and that early evidence suggests female are preferencing work at organisations with lower gender pay gaps which is contributing to the narrowing of the gap.³⁷
84. Public publishing of organisational level gender pay gap data is also necessary for relevant stakeholders such as unions to be able to measure the gender equity policies and strategies of an employer and identify where improvements are needed.

Recommendation:

Section 14 of the *Workplace Gender Equality Act 2012* should be amended to require the WGEA to publish organisational leave remuneration and gender pay gap data.

85. In retail, a relatively low number of sales employees are employed on a full-time basis and often roles that attract higher wages and other benefits such as bonuses and commission are attached to full-time roles. Retail employs more full-time male employees (55.3%) than female employees (44.7%). Female sales employees are also more likely to be part-time (66.8%) than men and more likely than men to be casual (61.3%).
86. Given that women working in retail and other feminised industries are more likely to be employed part-time or on a casual basis, reporting on the actual earnings of part-time and casual employees and the number of hours employees are engaged, in addition to full-time equivalent annual earnings would be beneficial.
87. The ILO Global Wage Report 2018/19 found that the median hourly gender pay gap in Australia was 11.9% and the median monthly gender pay gap was 30.2%. When compared with other nations, Australia fares well on gender pay gap measures using hourly wages, but not for monthly wages which takes hours worked into account. In fact, we have the highest discrepancy between median hourly and monthly gender pay gaps across all comparator countries. Importantly, this is suggestive of higher rates of part-time and casual work amongst women in Australia compared to other countries.³⁸
88. Reporting the number of hours worked will assist in identify gaps in access to work, hours and opportunities.

³⁷ Glennie M, von Reibnitz A, William J, Curtis S, Bordia S, 2021. *Gender pay gap reporting in Australia – time for an upgrade*. The Australian National University: Canberra, p 35

³⁸ Glennie M, von Reibnitz A, William J, Curtis S, Bordia S, 2021. *Gender pay gap reporting in Australia – time for an upgrade*. The Australian National University: Canberra, p 32

Recommendation:

The SDA recommends that Section 3 of the *Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1)* be amended to require employers to report disaggregated data on the actual earnings of part-time and casual employees as well as the number of hours employees are engaged, for managers and non-managers by gender, age and by workplace profile categories, instead of full-time equivalent annual earnings.

The Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1) should be amended to require employers to provide remuneration data for Chief Executive Officers (CEOs) or the equivalent.

89. Retailers, particularly in the operation of distribution and warehouses, use a mix of direct employees and labour hire staff. Wages sometimes differ between these two types of workers conducting the same work in the same workplace. To get an overall picture of the gender pay gap, employers should also be required to report on the wages paid to labour hire staff they use in the reporting period.

Recommendation:

The Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1) should also be amended to require employers to provide remuneration data for labour hire staff used in the reporting period.

90. The gender pay gap isn't the only economic gap which significantly impacts on the economic security of women. The impacts of gender inequality which the Workplace Gender Equality Act seeks to measure lead to life-long economic stress and insecurity that persists well into retirement. Women's superannuation balances at retirement are 47% lower than men's³⁹ and that 40% of older single retired women live in poverty and experience economic insecurity in retirement.⁴⁰ Older women are one of the fastest growing groups represented in the national homeless population.
91. *The Challenges of work, family and care* report found that half (51%) of SDA members surveyed disagreed or strongly disagreed that they expect to have enough superannuation when they retire. Mothers had particularly low expectations of their retirement savings with only 18% agreeing that they would have enough superannuation when they retire and 58% disagreed.⁴¹
92. Given the significance of the gender retirement gap, the WGEA should collect data from relevant employers in relation to the amount of superannuation paid, disaggregated by gender for managers, non-managers and by employment status. Currently, employer superannuation contributions are included in the full-time equivalent total remuneration data provided by employers. As this includes more than superannuation there is no visibility of differences in superannuation between male and female employees.

³⁹ Hetherington, D. and Smith, W., *Not So Super, For Women: Superannuation and Women's Retirement Outcomes* [2017], Per Capita, p 6

⁴⁰ *The Facts About Women and Super - Women in Super*

⁴¹ 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: UNSW Social Policy Research Centre, p 89

Recommendation:

The SDA recommends that the *Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1)* be amended to require the reporting of annual superannuation payments (disaggregated by gender for managers, non-managers, and by employment status) separate to the full-time annualised total remuneration.

93. Some employers have implemented policies and strategies to reduce the gender superannuation gap, such as paying a higher SG rate to female employees or making additional contributions. The WGEA should collect data in relation to this so that proactive policies can be measured.

Recommendation:

The SDA recommends that other data on superannuation also be expanded to include questions about the Superannuation Guarantee rate applied by gender, employment status and manager/non-manager or other measures to boost female superannuation balances.

94. The collection of other data on superannuation should also be expanded under GEI 4. The WGEA questionnaire was recently updated to include a question regarding the payment of superannuation to employees while on parental leave. Requirements to report on the payment of superannuation on parental leave should be included in the Instrument. The question should also be expanded to capture payment of superannuation on the government PLP, employer funded paid parental leave and unpaid parental leave period. The data should also be disaggregated to provide sight of access and eligibility. This information should be a mandatory reporting requirement. Further recommendations are contained under GEI4.

GEI 4: Availability and utility of employment terms, conditions and practices relating to flexible working arrangements for employees and to working arrangements supporting employees with family or caring responsibilities

95. All, except one, major retail and fast food companies considered in the report, reported to WGEA that they had a formal policy or strategy to support employees with family and caring responsibilities during 2019-20, with the major supermarkets indicating they offer a broad range of supports. It was unclear from the reports how widely the supports are accessible and how staff can access the supports.⁴²
96. The results of the SDA survey bear stark contrast to this, demonstrating that the existence of a policy or strategy which is reported to WGEA is not an indicator that an employer is addressing gender inequality or that the policy/strategy is resulting in any positive outcome for workers.
97. The report also found that although employers report having a policy, strategy or particular supports such as childcare, breastfeeding facilities etc. they are not required to indicate which employee cohorts have access to the supports as the data does not capture how many sites this was offered at, nor how many staff benefit.⁴³ In our experience, many of the supports ticked off in employer reports to WGEA are only available to support or head office employees and not frontline workers, which means they are accessible to only a very small proportion of the employer's workforce. Therefore, the reports to WGEA typically 'look' better than they are in practice.
98. The report also found that *'comprehensive flexible working arrangements were reportedly offered by some major retailers, who each reported all the options listed by WGEA. However, while these were reportedly offered to non-managers, it is not clear how many workers could genuinely access these options, and whether they were consistently available to staff in large frontline occupations. Fast food employers offered more limited options. They did not offer telecommuting, job sharing or compressed weeks'*.⁴⁴
99. This is further evidence that one of the failings of the data collected is that it gives no sight of how many or which employees have access to the supports offered in relation to flexible working arrangements. The other failing is that the data collected does not represent outcomes, which is the only measure to truly assess whether gender equality is improving. Without better measurement of what is provided and the outcome it is difficult to assess and remedy the gaps.
100. The *Challenges of work, family and care: Employer Analysis – Data Report*⁴⁵ found that:

Data reported to WGEA indicates companies have policies and strategies in place to support workers to manage their work-family responsibilities and to promote gender equality, yet the measures they have in place leave too many workers struggling.

Comparison of content from the WGEA reports shows that efforts to support workers differ substantially across employers, and in some organisations, supports are particularly thin. Workers' accounts indicate they continue to face difficulties in managing care responsibilities in contexts of low pay, poor job security and low control over working time. Organisational measures such as those reported to WGEA appear to have little impact on large groups of frontline workers, and many continue to lack genuine choice over their work and caring lives.

⁴² Cortis, N. and Blaxland, M. (2021) *Challenges of work, family and care: Employer Analysis – Data Report*, Social Policy Research Centre, UNSW Sydney, p 13

⁴³ Ibid, p 13

⁴⁴ Cortis, N. and Blaxland, M. (2021) *Challenges of work, family and care: Employer Analysis – Data Report*, Social Policy Research Centre, UNSW Sydney, p 17

⁴⁵ Ibid, p 47

As well as affecting workers' mental health and contributing to family stress, poor working time arrangements also contribute to disadvantage among children, many of whom miss out on opportunities due to their parents' working time arrangements, and the poor support that parents receive from employers. While some challenges relating to variable, unpredictable hours and earnings may be expected among people employed on a casual basis, even permanently employed workers faced difficulties with rostering, and even many full-time workers found they did not work enough hours to make a living.

Overall, the information underlines how large retail and fast food employers offer working time arrangements and pay rates which are out of step with the needs and routines of workers, their children and families leading to detrimental outcomes, which are often severe, to workers' ability provide essential care and work enough to make ends meet. This is not only negatively impacting on the short-term health and economic outcomes for workers but many children of retail and fast food workers are missing out on activities, with long-term implications for their futures. Children's life chances should not suffer because of their parents' employment, and employers must ensure the arrangements they offer do not contribute to intergenerational disadvantage.

When considering how working time is determined, flexible working policies only provide a small piece of the puzzle. Flexible Working Policies typically contain a broad statement of support for flexible working arrangements and are designed to reflect the minimum obligations under Section 65 of the Fair Work Act 2009 which provides a right for certain categories of employees, such as those with caring responsibilities, to 'request' a flexible working arrangement. Most often, the policy is enlivened by an employee request and almost all policies are limited by the employer's ability to rely on reasonable business grounds to refuse the request.

101. The other large piece of the puzzle is how employers set and determine rosters and patterns of work. In retail and fast food, rostering policies and practices are often a more important measure of how employers determine working time arrangements and have broader implications for when employees work than flexible working policies and are often difficult for workers to challenge. The results of our survey show that this significantly impacts on a worker's ability to participate in work and manage their care and family responsibilities.
102. We regularly see systemic discrimination through rostering policies which mandate specific roster patterns such as working at least one weekend in two and working a minimum number of evening shifts over a roster period. There is often little or no ability in these policies for workers with caring responsibilities to work a different pattern to accommodate caring needs and if there is a process to do this, it is prohibitive. This impacts on a worker's ability to manage care and is a form of indirect discrimination against carers, which particularly impacts women.
103. We also regularly see rostering policies for store management (Store Manager, Assistant Store Manager and Department/Customer Service Managers) positions such that require more than 38 hours a week and we rarely come across anyone working in a part-time capacity as a manager.
104. Rostering policies and practices also impact on workers who provide care in other ways such as how rosters can be changed, particularly the right for employers to unilaterally change a permanent roster with the provision of notice without proper consideration of how it impacts a worker's caring and family responsibilities. Other issues arising from rostering policies and practices include how much notice is provided for a roster change, how rosters are changed, particularly the increased use of technology to determine and change rosters, minimum shift, and roster provisions.

105. To properly capture data on flexible working policies and policies to support employees with family and caring responsibilities data must be collected on rostering policies, practices and working time security. This should include having rostering policies and practices that support workers with family and caring responsibilities and which do not discriminate against them.
106. The following provides a snap-shot of the data from the survey of SDA members demonstrating that the policies and strategies companies point to in reports to WGEA are failing most employees. The existence of the policies and strategies is not leading to positive outcomes for parents and carers, and particularly not for women, or indeed the advancement of gender equality. The data shows that it is having a profound impact on not only on the lives of workers, but also their families, including children. It is also impacting on the health and safety of workers and their families.
107. The WGEA framework is failing to collect meaningful data on the outcomes of gender equity policies and strategies and therefore, is not a reliable measure of gender equity.

Working time and employer rostering practices

108. SDA members described very poor working time security. Very high proportions of participants work non-standard hours, face challenges relating to unpredictable rosters (and income), and experience lack of consultation over constantly changing work times. This is particularly difficult for workers with caring or family responsibilities as it impacts on how they can manage those responsibilities and on how they are able to participate in work. Given the gendered nature of care, these practices prevent improvements in workplace gender equity.

Unstable and unpredictable work times

- One in ten parents (10%) said they do not have a regular work day. (*Figure 3.3*)
- Only two in five (40%) work the same shifts each week 'all of the time', (fathers 48% and mothers 37%). 17% only work the same shifts 'some or a little of the time' and 6% 'none of the time'.
- Permanent employment is not always stable or predictable with 18% of part-time and 13% of full-time workers only working the same shifts 'sometimes', 'a little of the time' or 'never'.
- 41% of parents said their shifts can change unexpectedly, including 36% of part-time and full-time employees. (*Table 8.2*)
- Unpredictable hours of work impacts participation and financial security. 34% agreed or strongly agreed that 'if my hours were more predictable, I would be able to work more' (53% of casual workers and 29% of permanent workers). (*Figure 8.6*)
- SDA members have very limited control over their working times. Only 19% can adjust start/ finish times and only 21% said they can change work days.
- 1 in 3 workers have to closely monitor their phone or device to receive notice of shifts.

Rosters and rostering challenges

- Many SDA members would prefer to work more hours and longer shifts when they do work. (Figure 8.3)
 - 40% agreed or strongly agreed 'I would like to work more hours', 58% among those who work less than 20 hours per week.
 - 37% agreed or strongly agreed 'I would prefer if the shifts available were longer'.
 - 26% felt their work was spread over too many days.
- 12% of parents use opposhifts, couples working opposite shifts to co-ordinate care in order to reduce care from outside the family, which they often can't afford or access meaning that families have little time at home together:

"I rarely see my husband: he works early morning until 5pm and I walk out the door to work until late. We struggle greatly." (Partnered mother of child with disability, permanent part-time) p 48

Lucky or punished

109. While affecting everyone, challenges with poor working time security and rostering, is exacerbated for workers who provide care. Where workers described their arrangements as suitable, they also highlighted feeling 'lucky', and framed their arrangements as atypical and precarious.

"I am very lucky with current dept manager. He understands my circumstances and works around me. This is not to say if he left I would be this lucky." (Woman, elder carer, casual)

110. Despite the existence of flexible working policies and policies to support employees with family and caring responsibilities, many workers are punished and made to feel bad for communicating their availability, refusing unsuitable shifts, or taking leave which has repercussions on access to hours and opportunities.

111. Members described repercussions and fear of being penalised, including loss of hours, when workers refuse shifts or seek to change them.

"In the month of February my daughter, at kinder, has caught croup, gastro and a virus which led to having a lot of time off, to the point where I had been flagged at work and was on a warning for dismissal." (Partnered mother, permanent part-time), p 40

"I have time limits as to when I can start and finish due to childcare opening hours, primary school drop off times, etc. These sometime threatens my role as a manager. You are made to feel you must be available 24/7 without the excuse of family (being a male would be so much easier)." (Partnered mother of child with disability, permanent part-time) p 69

"I submit hours of availability and they are ignored then work get upset when I tell them I can't do those hours that are outside my availability. They also get upset that I can't work certain hours as I have no care for the kids to go too and it's close to costing me my job. I also find I get told there are no more hours during my availability but then I see newer staff members being rostered on for the hours I've been told don't exist." (Sole mother of child with disability, casual) p 69

112. This demonstrates that the problems are systemic as workers who have a positive experience with their working arrangements and rosters feel that it is because they are lucky to have a 'good' manager rather than supported by company policies and practices and others fear repercussions for needing to take time off or refusing a shift due to caring responsibilities.
113. Current WGEA reporting does not provide visibility of these outcomes. Indeed, it is arguable that current WGEA reporting is masking these workplace problems.

Working time arrangements and rostering impacts workers and their family's mental health

114. 35% agreed or strongly agreed that the way they are rostered impacts on their mental health. This was a little higher for parents (36% of mothers and 41% of fathers) and much higher for those with more complex caring needs (46% of young carers, 46% of sole parents, 45% caring for someone with a long-term illness and 44% caring for someone with a disability).

115. Our members told us the significant challenges they face in managing their care with their work arrangements. These are just a handful of their stories:

"I have an autistic child and my manager doesn't understand how hard it is for myself to work outside of a schedule that I have set for the fortnight."

(Woman, carer of person with disability, permanent part-time) p 70

"My hours affect me and my family. I have an 11year-old to care for and my husband has terminal cancer. I need to be at home of a night-time, but work don't seem to care about that."

(Partnered mother of child with disability, permanent part-time) p 70

"Since the rosters are never permanent - sometimes rostered and then cancelled sometimes rostered and upon reporting for duty hours are deleted, unfixed hours, times and days makes it difficult to plan anything including financial, family time or childcare increasing anxiety to both me and my wife."

(Partnered father, casual) p 74

"That they roster according to a "shape" that is best for the company. I have said many times we are people and not just a line on a computer screen that can just conform to what they want."

(Partnered mother, carer, permanent full-time) p 64

"Management need to have more understanding how hard it is for some people. I have no immediate family in the area to help me. My daughter is a paraplegic who I help in some form every day. I have her 5yroid daughter living with me. They can and often do make you feel bad if you can't attend work because something has happened."

(Grandmother, carer of person with disability, permanent part-time) p 29

"My manager doesn't care that I'm a single mother and that my girls have to hang around outside the school for 1 hour and 10 minutes for me to pick them up. She also didn't care when she changed my roster and my daughters couldn't see their psychologist any more ... and she didn't care that my girls had to give up their sports... This has affected my and my girls' mental health and it affects our daily lives. Our lives are very stressful because of my work hours and my girls suffer because they only have me and they always miss out, and my boss couldn't care less."

(Sole mother, permanent part-time) p 79

Parental Leave

Paid and unpaid parental leave

116. Parental Leave is one of the important areas of employee support that relevant employers must report on under the *Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1)*. WGEA data shows that employers in the retail industry (24%) are much less likely to be providing paid primary carers leave to employees when compared to all industries (52.4%). This is similar for secondary carers leave (20.6% compared to 46.4%).⁴⁶ This is also a concerning statistic given that only large employers and reporting to WGEA.
117. Research comparing the SDA member survey to the main employers of the respondents, found that all except two provided paid parental leave for primary carers and most for secondary carers. Despite this, there are large gaps in the use of parental leave, paid or unpaid.
118. Only 72% of mothers and 34% of fathers have taken the governments Parental Leave Pay for the most recent birth or adoption of their child in last 5 years and **19% had not accessed any paid or unpaid leave for their last birth** (35% of mothers and 14% of fathers). Among parents with a child under 5, 19% of mothers and 47% of fathers had not received any paid leave to support their most recent birth. Only half (50%) of parents of young children accessed paid parental leave from their employer, (56% of mothers and 31% of fathers).⁴⁷
119. The report found that based on respondents to questions around parental leave taken, most would have been eligible for unpaid and paid parental leave according to their length of service. As the reasons these parents did not access paid leave, and in some cases unpaid leave, were not given, the researchers recommended that this question needs further exploration.⁴⁸
120. When looking at the quantity of parental leave taken, on average, mothers took 42.2 weeks and fathers took 4.6 weeks when their youngest child was born. However, the large majority said they would have preferred more time away from work (79% of mothers and 87% of fathers). The small minority of mothers who said they wouldn't prefer to have had more time off were away for a much longer period (average 75 weeks).
121. SDA members are typically from low income households. 52% of respondents live in households with post-tax income of less than \$1000 per week. This was the case for 32% of couple parents and 80% of sole parents, and 56% of workers who were not currently parenting a child aged under 18 (see Appendix Table A. 10).⁴⁹ As a result, the length of parental leave SDA members are able to take is inextricably linked to the availability and access to paid parental leave. Once paid parental leave ends, many are forced to return to work.

⁴⁶ [WGEA Data Explorer](#), extracted 19 November 2021

⁴⁷ 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: UNSW Social Policy Research Centre, p 52

⁴⁸ *Ibid*, p 53

⁴⁹ *Ibid*, p 82

Returning to work from Parental Leave and discrimination

122. Mothers commonly found the return to work difficult and struggled to return to the same position or a position that accommodated their families' needs. Some expressed a sense of precarity in transitioning back to work.

123. Despite policies for flexible work and to support family and caring responsibilities, as indicated in reports to WGEA, many workers are unable to negotiate this on return to work. Ticking that employers have a policy is not an indicator that flexible work arrangements and consideration of caring and family responsibilities is actually provided. Most retail and fast food employers have policies that reflect the bare minimum legislative obligations, which are already flawed and even these are not systemically implemented in practice. The legal obligation is to provide the right for a worker to 'request' flexible work, not for a right to flexible work and very few employers provide more than that.

124. A better reflection of what employers actually provide requires questions about eligibility to access flexible work (who, length of service etc.) and whether the policy includes a substantive right to a working arrangement or roster that accommodates caring and family responsibilities.

"Finding it hard to agree on hours with my store with returning back to work... my previous hours aren't suitable anymore and I'm being told jobs I was doing before I left are now no longer available."
(Partnered mother, elder carer, permanent part-time) p 57

"Initially after returning from maternity leave I was told there were no available hours and to wait till managers came back off leave a week later. I was then provided 3 roster options with nowhere near my entitled work hours. Shifts were too late or too early as childcare wouldn't be open, so was told I miss out on hours then. The transition has been extremely stressful for my family. I definitely thought I would have been more supported in my return to work."
(Partnered mother, permanent part-time) p 57

125. The discrimination is all too prevailing as evidenced by the difficulties women face returning while breastfeeding, with some explicitly told they could not express breastmilk at work. All but two of the major employers considered in the companion report indicated they provided breastfeeding facilities; however, this is not consistent with the feedback from our member survey.

"I was told as a casual I wasn't allowed to express pump or I would get sacked."
(Sole mother, casual) p 57

"I had to go to formula feeding as my workplace and shifts do not allow for me to express milk."
(Partnered mother, carer for person with long-term illness, permanent part-time) p 57

126. Some expressed insufficient opportunity to change hours to accommodate breastfeeding or parenting

"Returning to work was not a positive experience... My employer would not change my contract hours upon returning to work to reflect being a parent and still breastfeeding my baby. Not very flexible in terms of family and work balance."
(Partnered mother, permanent part-time)

127. Fathers overwhelmingly wished for more time off and expressed that time was insufficient especially following a caesarean birth and some were pressured to work despite wanting time off.

“Area manager would not let me take my holidays for my daughter’s birth made me come back to work in middle of my holidays cutting short my time with my family.”

(Partnered father, permanent full-time) p 58

128. The WGEA questionnaire was recently updated to include a question regarding the payment of superannuation to employees while on parental leave. As mentioned under GEI 3, requirements to report on the payment of superannuation on parental leave should be included in the Instrument. The question should also be expanded to capture payment of superannuation on the government PLP, employer funded paid parental leave and unpaid parental leave period. The data should also be disaggregated to provide sight of access and eligibility. This information should be a mandatory reporting requirement.

Recommendations for GEI4:

The SDA recommends that more data should be collected in relation to flexible work, support for employees with family and caring responsibilities and parental leave, particularly in relation to access and usage, including the eligibility period for access and average lengths of usage of both paid and unpaid employer provided parental leave by manager/non-manager, occupation, carer and employment status.

The SDA recommends that data be collected in relation to eligibility requirements to access flexible work (who, length of service etc.) and whether the policy includes a substantive right to a working arrangement or roster that accommodates caring and family responsibilities.

The SDA recommends that organisations be required to analyse and provide data on the cohorts of workers who are not accessing supports, and why, and to report on changes they will make to improve access.

The SDA recommends that employers be required to report on the number of refusals of requests for flexible work or roster changes for the purpose of caring or family responsibilities or in relation to family violence.

The SDA recommends that employers should be required to report the date the policy they are reporting on was most recently updated and confirm it meets at least minimum legislative requirements.

The SDA recommends that data collected on superannuation be expanded under GEI 4 and that there should be mandatory reporting on the payment of superannuation to employees while on parental leave including while in receipt of the government Parental Leave Payment, employer funded paid parental leave and unpaid parental leave period. The data should also be disaggregated to provide sight of access and eligibility. This information should be a mandatory reporting requirement.

The SDA recommends that data provided under the GEIs also be disaggregated by occupations reported on e.g., for retail industry employers it would include data on access to these for sales workers compared to support office based employees.

The SDA recommends that the requirement to provide disaggregated data should also be applied to the policies and non-leave based measures to support employees with family or caring responsibilities, and employees who have or are experiencing family or domestic violence.

The SDA recommends that employers be required to report on working time security and rostering policies and procedures, and whether these support employees with caring and family responsibilities and doesn’t indirectly discriminate against those workers.

GEI 5: Consultation with employees on issues concerning gender equality in the workplace

129. Consultation on gender equality in retail is relatively low. The WGEA data shows that only 40.2% of employers in retail consult with employees on gender equality. The UNSW employer analysis companion report found that the main fast food employers reported no consultation with employees on gender equality issues and the consultation by retail employers was varied with only one major retailer reporting a comprehensive range of strategies, including consulting with women and men who resigned while on parental leave and consulting with the relevant employee association. However, we are aware that not all responses by that employer were accurate and consultation with the SDA did not occur. That employer actively refuses to consult in relation to any of its policies that impact gender equality and even fails to provide them to the union when updated and implemented. Therefore, for employees in retail and fast food, consultation on gender equality issues is patchy at best.
130. The results from the survey of SDA members were more favourable for those working with employers who consult more with the SDA on these matters and least favourable for the company that refuses to consult, particularly in relation to working time arrangements. This demonstrates that consultation with unions and employees does lead to better outcomes.
131. Capturing data on consultation is important, however, if there is no measurement of action following consultation, then the consultation alone is somewhat meaningless. The reporting should measure actions taken by companies following consultation, for example changes to policy, strategy, equality measures or wages or other entitlements provided to employees, that address issues identified from the consultation.

Recommendation:

The SDA recommends that employers be required to consult with employees and their unions on measures to improve gender equity; and to report on the action taken as a result of such consultation.

GEI 6: Sex-based harassment and discrimination

132. WGEA data indicates that almost all employers (98.6%) have a formal policy or formal strategy on sex-based harassment and discrimination prevention. This is consistent with employers in the retail industry (98%). Almost all employers include a grievance process in these policies or strategies (97.8%) and a large majority (88.5%) provide training on this to managers.
133. The persistently high, and escalating prevalence of sexual harassment in Australian workplaces demonstrates that the existence of policies and strategies is completely failing to reduce sexual harassment. Over the period of gender equality reporting the rate of workplace sexual harassment has actually been increasing.
134. The 2018 Australian Human Rights Commission (AHRC) national survey *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces (Respect@Work)* found that 33% of people who had been in the workforce in the previous five years said they had experienced workplace sexual harassment. Sexual harassment is a gendered issue with women (39%) more likely than men (26%) to have experienced workplace sexual harassment in this period.⁵⁰ The report also found that 'Prevalence rates in previous national surveys were 11% in 2003, 4% in 2008 and 21% in 2012.'⁵¹
135. The *Respect@Work* inquiry found that these rates are higher in specific industries. Retail (42%) and accommodation and food services (39%) are among the industries at a greater risk of workplace sexual harassment.⁵² These statistics were confirmed in the 2019 AHRC survey of SDA members, *Everyone's business: Survey on sexual harassment of members of the Shop Distributive Allies Employees Association (Everyone's business survey)* which found the following prevalence of workplace sexual harassment; fast food (37%), retail (39%) and other industry (47%) sectors.
136. *The Everyone's business: Survey on sexual harassment of members of the Shop Distributive Allies Employees Association* report can be viewed here: <https://humanrights.gov.au/everyones-business-sexual-harassment-sda-members>
137. The *Respect@Work* Report made several recommendations in relation to the need for gender equality strategies that address sexual harassment and that recognise sexual harassment is driven by gender inequality and is a form of gender-based violence. Employers should be required to report on whether policies they have on sex-based discrimination and harassment recognise that it is driven by gender inequality and that the policies contain actions aimed to address this.
138. The *Respect@Work* report also makes the following specific recommendations in relation to the collection of sexual harassment data by the WGEA:

Recommendation 42:

The Workplace Gender Equality Agency work with the Workplace Sexual Harassment Council to consider how good practice indicators for measuring and monitoring sexual harassment prevalence, prevention and response may apply to reporting in relation to sexual harassment under the *Workplace Gender Equality Act 2012*.

⁵⁰ The Australian Human Rights Commission. (2018). *Everyone's business: Fourth national survey on sexual harassment in Australian Workplaces*. p, 26

⁵¹ The Australian Human Rights Commission. *Respect At Work: National Inquiry into sexual harassment in Australian Workplaces*. p 111

⁵² The Australian Human Rights Commission. (2018). *Everyone's business: Fourth national survey on sexual harassment in Australian Workplaces*. p, 9

Recommendation 43:

The Australian Government:

- a. Amend the *Workplace Gender Equality Act 2012* to require public sector organisations to report to the Workplace Gender Equality Agency on its gender equality indicators.
- b. Fund the Workplace Gender Equality Agency adequately to meet these expanded reporting obligations.

139. The current WGEA reporting requirements simply require employers to report if they have a policy or strategy on sexual harassment and if training is conducted. The evidence clearly shows that this in itself does not lead to cultural change to prevent sexual harassment.

140. The SDA strongly supports the urgent implementation of the Respect@ Work recommendations, particularly in relation to including indicators for measuring and monitoring sexual harassment prevalence, prevention, and response.

141. The WGEA reporting requirements should require employers to report the number of sexual harassment complaints received in the reporting period, the outcomes and actions of those complaints, and how many complainants have continued in their employment after making a complaint.

Recommendation:

The SDA recommends the urgent implementation of the Respect@ Work recommendations relating to WGEA and that when considering the good practice indicators for measuring and monitoring sexual harassment prevalence, prevention and response, the following data be required:

- Do you have a policy and complaints process in relation to sexual harassment?
- Does the policy or strategy recognise sexual harassment and discrimination is driven by gender inequality and that the policies contain actions aimed to address this?
- Does the policy require reporting sexual harassment complaints and outcomes to the board, where applicable?
- Provision of training, including method and frequency disaggregated by manager/non-manager?
- How many sexual harassment complaints were received during the reporting period?
- What were the outcomes of the complaints (substantiated/unsubstantiated)?
- Have the complainants continued in their employment?
- What preventative actions have been taken to ensure sexual harassment doesn't happen again?

Question 5

In addition to gender, should WGEA collect other data on diversity and inclusion criteria on a mandatory basis, to enable a more nuanced analysis of men and women's experiences in the workplace?

If yes, please specify criteria (e.g. cultural and linguistic diversity, disability, age, location of primary workplace).

If not, why not?

142. The SDA supports a more expansive collection of data so that any intersectional discrimination can be identified. Discrimination against women often intersects and is exacerbated by other forms of discrimination such as age, disability, cultural and linguistic diversity, if you identify as LGBTIQ+, or you are Aboriginal or Torres Strait Islander. For our members, who are frontline workers, location of workplace also impacts on access to opportunity and gender equality policies are rarely targeted to those who work in stores.
143. The collection of this data will allow a more comprehensive set of data to be produced which may highlight to employers and industry particular groups of women who may be impacted by gender inequality.

Recommendation:

The SDA recommends that data collection be expanded to include data by age, disability, cultural and linguistic diversity, identifying as LGBTIQ+, Aboriginal or Torres Strait Islander descent and work location.

Question 6

How could data be better collected and/or used by WGEA to promote and improve gender equality?

Should there be some form of pay transparency – should remuneration data in some form be public?

144. We have addressed this question throughout the submission and particularly in response to Question 4. The SDA supports the collection of additional data that allows WGEA to test the implementation and outcomes of strategies and policies that are reported not just reporting the existence of policies and strategies.

145. See response to Q4 under GEI3. The SDA provides the following recommendations regarding pay transparency and improvements in the collection of remuneration data.

Recommendations:

Section 14 of the *Workplace Gender Equality Act 2012* should be amended to require the WGEA to publish remuneration reported to WGEA, that is, organisational level gender pay gap data.

The SDA recommends that Section 3 of the *Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1)* be amended to require employers to report disaggregated data on the actual earnings of part-time and casual employees as well as the number of hours employees are engaged, for managers and non-managers by gender and by workplace profile categories, in addition to full-time equivalent annual earnings.

The *Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1)* should also be amended to require employers to provide remuneration data for Chief Executive Officers (CEOs) or the equivalent.

The *Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1)* should also be amended to require employers to provide remuneration data for labour hire used in the reporting period.

The SDA recommends that the *Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1)* be amended to require the reporting of annual superannuation contributions (disaggregated by gender for managers, non-managers, and by employment status) separate to the full-time annualised total remuneration.

146. During the course of the research undertaken to compare company reports to WGEA with the data from the SDA member survey, the researchers used the WGEA online data. This process identified some issues with ease of accessibility and usability. The researchers found that the release of unit record file on data.gov.au is good and should be maintained. However, the data could be improved if relevant totals were calculated. There is currently quite substantial coding that users need to do to calculate totals across variables. Other publicly available administrative datasets tend to have some derived (calculated) variables which reduce the time required and improve accessibility.

Recommendation:

The SDA recommends that the data sets available be improved by providing relevant calculated totals.

Question 7

Are there changes that could be made to the Workplace Gender Equality Act that would help reduce the regulatory burden on relevant employers while continuing to enable WGEA to promote and improve gender equality?

Should other data sources, such as Single Touch Payroll data, be used by WGEA instead of employers providing the same data to two Government agencies?

147. The real question is can employers continue to afford the burden of gender inequality on their business and the economy.
148. There have been ongoing improvements to reporting over the last few years, particularly in relation to online tools. The SDA supports continual improvement to reporting processes to increase the ease of reporting for relevant employers.
149. However, we believe that this should not come at the cost of the level and detail of data that is collected. While we appreciate that where possible the 'regulatory burden' should be minimised, it should be balanced against the overwhelming benefit that more gender equitable workplaces provide, not only to individual workers but to organisations and the national economy.

Question 8

Could the minimum standards be expanded to improve the way they drive practical gender equality outcomes in workplaces?

What would employers need to do to implement these changes in their workplace?

Should minimum standards apply to all reporting employers, not just those with 500 or more employees?

150. Currently, relevant employers with 500 or more employees must have policies or strategies in place to support one or more of the following indicators (s 5(3) of the Minimum Standards Legislative Instrument):
- gender composition of the workforce
 - equal remuneration between women and men
 - flexible working arrangements, and
 - sex-based harassment and discrimination.
151. These are what is categorised by the legislation as minimum standards required for gender equality. They do not represent best practice and must be something that all employers be required to have policies and measures to support, regardless of the number of employees they have.
152. For a relevant employer to meet the minimum standard, they only need a formal policy or strategy in place to support one Gender Equality Indicator. This is not sufficient and if we are to improve gender equality in Australian workplaces employers should meet all minimum standards.
153. There is also no requirement that the policy or strategy they have in place must meet any minimum standard, legislative or otherwise, or that it has been genuinely and fully implemented in the workplace and is achieving its intention. Meeting this simple requirement does not drive improvements in the gender pay gap or gender equality and collecting data on the existence of a policy or strategy alone is not meaningful measurement of gender equality actions.
154. The minimum standards should apply to all reporting organisations regardless of size. There are only 4 minimum standards and one relates to providing the composition of the workforce. An expectation that all reporting organisations meet all 4 minimum standards is not an over burden given the potential benefits.
155. The mandated minimum standards should also be linked to outcomes rather than the existence of a policy or strategy. The Australian National University suggests that this be based on rolling average reductions to the gender pay gap to assist with workforce fluctuations and time needed for some organisations to achieve this.⁵³
156. All employers should be required to report against all indicators and the **minimum standards should be extended** to all reporting organisations regardless of the number of employees.

Recommendation:

The SDA recommends that the minimum standards should apply to all reporting organisations regardless of size and that compliance with the minimum standards be linked to outcomes rather than the existence of a policy or strategy.

⁵³ Op Cit, p 39

Question 9

Are the compliance mechanisms in the Workplace Gender Equality Act, and consequences for non-compliance, effective to promote and improve gender equality?

If not, how could they be improved?

157. Compliance powers are almost non-existent. WGEA can publicly name and shame employers as non-compliant (s 19D); and non-compliant employers may not be eligible for Commonwealth contracts, grants, or other financial assistance (s 18). However, *'A 2021 audit of government tender records by national news outlets found that 31 non-compliant organisations were awarded Federal government contracts, suggesting that government sanctions through withholding eligibility were not being imposed (SMH, 2021).*⁵⁴ While compliance rates in Australia are high by international standards, non-compliance rates have more than doubled since reporting began under WGEA.⁵⁵

Recommendation:

The SDA recommends that the WGEA be given greater powers of enforcement under the Act, including the power to issue financial penalties on relevant employers who are required to report but fail to do so and who are non-complaint for other reasons under the Act.

158. This would serve to establish the importance of the Act and help to ensure employers continue to engage in reporting and gender equality more broadly.

159. While non-compliance under the Act should be addressed with appropriate penalties, there are also issues in relation to how organisations report, some are late, incomplete or answers are provided which are incorrect or don't reflect the quality of the measures an organisation has in place. This compromises the ability to measure genuine compliance and is not consistent with the intention or objectives of the Act. One measure contained in the Act that may provide a check and balance in relation to what is reported is the inclusion of employees and employee associations in the process.

160. The Act contains some barriers to unions being able to genuinely participate in the process. Under Section 16A of the Act, a relevant employer is only required to take all reasonable steps, within 7 days after lodging the report to inform the employee association it has lodged the report. There is no requirement to provide a copy of the report. Compliance with Section 16A is hit and miss at best and reports are often not provided to unions when they are informed a report has been lodged and despite requests for a copy of the report.

161. Section 16B of the Act requires an employer who informs an employee association it has lodged its report to advise that comments on the report may be given to the employer or to the Agency. Given there is no requirement to provide a copy of the report to the employee association and reports are often published by WGEA months later, this is a significant barrier for unions to be able to review and assess the validity of the reports and make timely comment, and prior to WGEA issuing compliance notices.

⁵⁴ Op cit, p 29

⁵⁵ Glennie M, von Reibnitz A, William J, Curtis S, Bordia S, 2021. *Gender pay gap reporting in Australia – time for an upgrade.* The Australian National University: Canberra, p 28

Recommendation:

The SDA recommends that Section 16A of the Act be amended to require relevant employers to inform employee associations it has lodged its report and provide them with a copy of the report.

162. The Act also fails to provide a mechanism for WGEA to conduct remuneration and gender equity audits to ensure that reported policies and strategies are of a required standard to meet compliance, and are being implemented fully and genuinely.
163. Recent research found that *'Reliance on third party monitoring and advocacy was highlighted as a weakness of the Australian legislation, as it appears that information leverage is not sufficient to overcome the disadvantaged bargaining position of women and women's advocates in relation to employment'*.⁵⁶
164. As discussed earlier in this submission, there are international examples of gender pay gap reporting which require more corrective actions to ensure organisations are implementing measures beyond the existence of policy to drive gender equality. In France and Spain, both require organisations to create action plans and negotiate them with unions or employee representatives.

Recommendation:

The SDA recommends that employers be required to consult with employees and their unions on measures to improve gender equity; and to report on the action taken as a result of such consultation.

165. The compliance framework needs to be strengthened to ensure that what is being reported is correct and to identify areas for improvement and action, which should be mandated. The Act should be framed towards positive action when the gender pay gap in organisations is not reducing or other gender equality measures are not improving. Without this, there is no genuine push for change as there are no targets or points in the future to work towards.

Recommendation:

The Act should be amended to include powers for WGEA or another appropriate body to conduct remuneration and gender equity audits to ensure policies, strategies and action plans are being implemented as reported with the ability to issue compliance notices requiring actions to be taken.

⁵⁶ Op cit, p 32

Question 10

Are there any other matters you want to comment on in relation to the Workplace Gender Equality Act and improving and promoting gender equality in the workplace in Australia?

The SDA has nothing further to add.

EXECUTIVE SUMMARY

Challenges of work, family and care.



Who Cares?
A FAIR SHARE OF WORK AND CARE

FOR AUSTRALIA'S RETAIL,
ONLINE RETAIL, WAREHOUSING
AND FAST FOOD WORKERS

Executive Summary

This report provides information about the work, family and care arrangements of employees in Australia's retail, fast food and warehousing industries. Through the pandemic, these workers have been recognised for their essential contributions in maintaining safe access to food and other necessities for the community. Yet this recognition is not reflected in their employment conditions and supports; they remain low paid and lack access to the flexibility arrangements which assist workers in other industries to provide care to children and adults, and to manage work and family commitments.

To explore the challenges of managing work and family experienced by these workers, including their care for children and others, and their employment needs, Australia's largest private sector union, the SDA, the union for workers in retail, fast food and warehousing, commissioned this research from the Social Policy Research Centre at UNSW. Information comes from a national survey of SDA members, conducted in early 2021, which explored:

- workers' responsibilities to care for children and vulnerable adults;
- how workers arrange their care responsibilities while they are working; and
- the challenges arising from employers' working time practices and Australia's system of childcare provision.

Findings show that as well as making important economic and social contributions through their paid work, SDA members make valuable contributions through the unpaid labour they provide as parents, and as carers to children and adults in their families and communities. Yet these social and economic contributions are poorly recognised and accommodated in their working lives.

The data shows that:

- SDA members lack genuine choice about their working times and childcare arrangements and require better support structures, including access to responsive childcare services that recognise their needs, to ensure they have meaningful opportunities to shape their working and caring lives.
- Industrial relations settings and employer practices are limiting the choices and opportunities available to SDA members. Rostering and pay are shaped too strongly around employers' agendas of profitability and cost minimisation.
- The ways work is organised exacerbates difficulties faced by workers needing to organise their work and family lives, and find time for care. This impacts on the children of retail workers, many of whom cannot access early education and have constrained opportunities to fully participate in other aspects of social and community life.

Changes are needed at the level of industrial relations policy, and within employing organisations and local workplaces. Policy and regulatory changes should be aimed at promoting decent pay, job security, predictability of shifts, employees' control over work times, access to reasonable shift lengths, genuine choices about work days and times, and to ensure workers can make schedule adjustments without fear of repercussions. Changes are also needed in Australia's childcare system, to improve the affordability, accessibility and suitability of care for low-income workers.





Key findings

Care responsibilities

SDA members contribute unpaid care work that is essential to their families and communities.

- 55% of all participants said they regularly provide some form of care to another person, such as care to a child, grandchild, or to an older person, or a person with a disability or long-term health condition.
- This includes 39% who provide care to a child or young person under 18 (either in or outside their household). The vast majority of those caring for a child were doing so as parents. Indeed, 30% of survey participants were parents with a child under 18.
- 17% provide regular care to an older person, 10% care for someone with a long-term illness or health condition, and 9% provide regular care to a person with a disability.
- Australian Bureau of Statistics (ABS) data indicates that 1 in 9 Australians (11%) provide unpaid care to people with disability and older Australians.¹ The equivalent figure among SDA survey respondents is 24%.

"I can't use childcare until I have more regular work to accommodate childcare."

Partnered mother, casual

Complex care responsibilities

Many SDA members work and care in challenging circumstances.

- 25% of participants who are parents with a child under 18 said they are sole parents. This is high: sole parent families comprise around 14% of families in Australia.²
- 16% of parents with a child under 18 said they have a child with a disability or additional needs. While measured differently, ABS data indicates that in 2018, 7.7% of children under 15 had a disability.³
- 13% of survey participants aged 25 or under were young carers; that is, they are young people who provide regular care to an older person or adult with a disability or long-term health condition. This is much higher than in the wider population: the 2016 Census found that among people aged 15 to 24, 5.6% were young carers.⁴

Managing work and care

The survey shows the needs of retail workers, including parents and carers, are being left unmet by employers and employment regulations, and by Australia's childcare system.

- Many SDA members have contributed years, even decades of service to their employers. Yet their working time arrangements continue to be characterised by short, fluctuating hours, and precarious shifts. This impacts on mental health, constrains opportunities to provide care, and limits opportunities for families to spend time together.

"I made sure [my hours] would work with my family by being completely transparent and upfront about my needs. It was perfect up until recent new management, I'm constantly having to dispute my roster and my hours are getting cut because they can no longer work with my schedule. I feel like a burden, and I come home stressed out and exhausted."

Partnered mother, casual

Informal care

- Most parents use informal arrangements to care for their children while they are working. Among parents of children aged 12 or under, 9% used formal care services only, half (49%) used informal care only, and 42% used a combination of both.
- Care by a grandparent is particularly important. It enables mothers in particular to extend their working hours and earnings, and to reduce or avoid the costs of formal care. Among mothers with a child aged 12 or under, 30% used grandparent care each week and a further 10% used it most weeks. However, access to grandparent care cannot be assumed: over a third of mothers with a child under 12 (36%) did not report using grandparent care.
- As well as drawing on grandparent care, many SDA members are themselves providing care as grandparents. Among those aged over 50, 17% were providing regular unpaid care to a grandchild.
- Young workers also provide care. Among those aged 20 or under, 14% provided regular unpaid care for a younger sibling.

"Having my eldest son (13 years) watch my younger son after school allows me to work just a little bit longer each shift so I can afford bills etc; My parents don't charge if I need them to watch or pick up an unwell child."

Sole father, permanent part-time

Formal care services

- Use of early education and care services (ECEC) or formal childcare is most common among families with a pre-school aged child, however, it is usually used in combination with informal arrangements.
- Comments from workers highlight the ways some families have to make extraordinary efforts to co-ordinate family schedules around work and care, in ways that avoid or reduce their use of formal paid childcare or use of non-parental care. This is largely due to the cost of childcare, including the charging of fees in blocks which do not correspond well with working hours, and because childcare hours do not accommodate the non-standard hours which are prevalent in retail.
- A commonly mentioned challenge is the need to pay for a full day of long day care, even if a child attends only for short hours.
- Difficulties accessing childcare are resulting in inequitable participation in early education among children of SDA members. This can have enduring consequences for children's learning. Nationally, 95% of children participate in a preschool program for 15 hours per week before they start school.⁵ Among surveyed parents with a child starting school in 2022, 72% said their child attended at least 15 hours of long day care, preschool, or kindergarten, where they might receive a preschool education. 10% said they attended but for less than 15 hours, 12% did not attend, and 5% were unsure about attendance or hours.

"It is very hard to find a childcare in the weekends, evening etc. For people like us who do shift work, it is stressful to get."

Partnered father, permanent full-time

Even where SDA members use ECEC services, they experience difficulties.

- For those with a child 5 or under, the most common childcare difficulties were affording childcare (reported by 63% of participants engaged with formal services); coordinating work times with childcare (reported by 46% of those using formal services); finding childcare that fits work schedules (35%); and finding childcare at short notice (35%).
- For those with a primary school-aged child, the most common childcare difficulties were coordinating worktime with childcare (38%), affording childcare (37%) and finding childcare during the holidays (36%).
- Where childcare arrangements were perceived to work well, success was attributed to informal care arrangements, ability to co-ordinate work times within the family, and the predictability of shifts.

Labour supply

Difficulties accessing suitable childcare are reducing labour supply, and particularly impacting on the participation of women in the workforce and their working hours. This impacts on family earnings.

- Among parents with a child aged 12 or under, 43% of mothers and 35% of fathers reported wanting to work more hours, but access to suitable childcare is a barrier: 35% of mothers and 27% of fathers agreed with the statement "If I had suitable childcare, I would work more hours".
- A third of parents with a child 12 or under (33%) said they turn down extra shifts because they won't earn much more after tax and childcare costs.

"I changed my work hours so that I can be home during the day and my husband is home at night with the children. It was too hard trying to work around childcare and school and then what to do when someone is sick"

Partnered mother, permanent part-time

Parental leave

Paid parental leave helps support parents around the time of childbirth or adoption of a child, and when a child is very young. SDA members with a child aged 5 or under were asked about whether they had taken parental leave for their most recent birth, and the type of leave they used.

- The Australian Government's provision of Parental Leave Pay is the most important source of support for SDA members. Parental Leave Pay was the most common form of leave taken, reported by 72% of mothers and 34% of fathers with a child under 5. Although eligibility and the reasons for non-use are not clear from the data, the information nonetheless indicates that many SDA members have missed out.

Overall, 19% of parents of young children said they had not accessed any paid or unpaid leave for their last birth. This was higher for fathers (35%) than mothers (14%).

- Among parents with a child under 5, 19% of mothers and 47% of fathers had not received any paid leave to support their most recent birth.
- Comments on parental leave and transitioning back to work showed mothers faced challenges securing appropriate conditions when returning to work, and also felt they were missing important milestones in their children's lives.

"It was hard to jump straight back into full-time work [while] juggling a sick baby. No sick leave entitlements...was hard. I was made to feel like I had to get straight back into it full force or they would find someone to replace me."

Partnered mother of child with disability,
permanent part-time



Working time and rostering practices

SDA members described very poor working time security. Poor working time security affects all workers, and is very adverse for parents and others with caring responsibilities, impacting on their access to formal and informal care.

- Only two in five (40%) of participants work the same shifts each week 'all of the time'. This is higher for fathers (48%) and lower for mothers (37%).
- Although casual work is most unstable, many of those employed permanently report that their employment does not provide stable, predictable hours
- One in ten parents (10%) said they do not have regular work days.

Most workers report that rosters are set by a manager who they have regular contact with. Those who are satisfied with their working times frequently attribute this to 'luck' in having a good manager, rather than systemic practice. Workers described substantial challenges, including:

- working times which emphasise business priorities and do not accommodate personal needs and circumstances. These affect everyone but make life particularly difficult for workers with complex care responsibilities;
- low hours, short shifts and insecurity, contributing to underemployment and financial difficulties and stress.
- mismatch between working times and childcare availability;
- changing schedules, often at short notice and without adequate communication from employers;
- repercussions and being penalised, including loss of hours, when workers refuse shifts or seek to change them.

"We had to change our start and finish times on night fill so the company can save on penalty rates. We were not given a choice just told it was changing so all our contracts had to change too. There was no consideration for night fill members that have to pick their children up from school etc. Now we also get paid less because of this."

Sole mother, permanent part-time

Impacts on workers and families

Rostering practices contribute to financial difficulties in low-income families, make it difficult for families to access childcare, and make it difficult for families to spend time together. Rostering practices also prevent workers from working more hours. Employers' rostering practices add to parents' unpaid workload. Among those with a child aged 12 or under:

- 68% agreed or strongly agreed with the statement "When I get my roster, I have to check it fits with the family's childcare arrangements".
- 69% agreed their work times affect when other family members can work.
- 62% said they find it stressful to organise childcare around work times.

Rostering also impacts on family stress and the mental health of the worker and members of their family:

- Of those with a child 12 or under, 37% of mothers and 42% of fathers agreed or strongly agreed with the statement "The way I am rostered to work impacts on my mental health".
- 63% of parents with a child aged 12 or under agreed or strongly agreed that they worry about what's happening with their children whilst working (69% of mothers and 57% of fathers).
- Among mothers with a child below school age, those using formal childcare services were less likely to worry about their children compared with others, underlining the importance of formal childcare for alleviating maternal stress.

Financial security

Many workers find that low pay makes it difficult to meet the needs of their families.

- 55% of respondents live in households with post-tax income of less than \$1000 per week. 32% of couple parents and 80% of sole parents live in households with incomes under \$1000.
- A substantial proportion of parents caring for children find their wages are too low to meet their needs. 46% of parents in couple relationships and 56% of sole parents disagreed or strongly disagreed that they are satisfied with their take home pay.
- Many find they work fewer hours than they need. Only 20% of casuals agreed (or strongly agreed) that they work enough hours to make a living, as was the case for 29% of those employed on a permanent part-time basis. Problematically, only 57% of permanent full-time employees said they work enough hours to make a living, reflecting the low hourly rates received.
- Half of participants agreed that they rely on penalty rates to make a living (50%). This was not restricted to casuals, 53% of permanent part-time workers and 50% of those with permanent full-time hours said this was the case.
- Around a third of parents agreed with the statement "I turn down extra shifts because I won't earn much more after tax and childcare costs".
- Parents commented on difficulties of living on low incomes. They described trying to work hours that enabled them to contain childcare costs. Pay was seen as low given the nature and complexity of the work.
- While a quarter of participants (26%) were unsure about the adequacy of their retirement savings, around half (51%) disagreed with the statement "I expect to have enough superannuation when I retire", and only 23% agreed.
- Mothers' expectations of retirement savings are particularly low: only 18% of mothers with a child under 18 agreed they would have enough superannuation when they retire.

"I'm a single mother that gets no child support and live week to week on my wages."

Sole mother of child with disability, permanent full-time

"It shouldn't be about working extra hours, it's about the hourly rate. 42 hrs per week to struggle paying bills!"

Sole father and carer of adult with disability, permanent full-time

Improving work and care

The research demonstrates that formal child care options and industrial relations regulations are not meeting the work and family needs of SDA members. In particular, rostering arrangements and low pay are impeding the ability of workers to organise the time needed to provide care for their children, extended families and communities. This is affecting children's access to early education and opportunities to participate in extra-curricular activities.

Reform is needed to improve working time arrangements in retail, fast food and warehousing industries, so that SDA members have control over their working hours and have predictable shifts so they can organise care and other aspects of their lives. Better job security and pay are also needed, to support all workers to fulfill their care responsibilities, and to enable families to engage with formal care services.

Changes are also needed to ensure child care is available to SDA members in ways that are affordable and suitable for their working hours. Childcare reform should be oriented around principles of children's universal rights to early education and care, to enable access for every child regardless of parents' incomes or employment arrangements.

This Executive Summary has been taken from the Who Cares Survey Report:
Challenges of work, family and care for Australia's retail, online retail, warehousing and fast food workers.

To view the entire report go to: www.national.sda.com.au/care



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- ⁵ Through the Council of Australian Governments', all jurisdictions have agreed to aim to provide 15 hours per week of early education for all children in the year before school. This reflects that 15 hours is considered the minimum amount of learning needed to develop the skills needed for a successful start at school.



Appendix B: Rationale for SDA policy positions

SDA policy is driven by providing value to our members whose work is regulated by a broken industrial framework. We seek an economic system that supports, protects and advances the interests of working people in this country.

Our predecessors built the conciliation and arbitration system which provided the foundations to our nations prosperity over a century ago, it is now our responsibility to build a system for the next generation.

Since the introduction of the Fair Work Act 2009 and subsequent radical changes to the financial and digital context inequality has grown and economic and political power has concentrated in the hands of a few.

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 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) 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.

