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Inquiry into Economic Equity for Victorian Women

Prepared by: Professor Helen Hodgson and Dr Kathy MacDermott
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Authorisation

This submission has been authorised by the NFAW Board

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This submission is being made by The National Foundation for Australian Women (NFAW).

NFAW is dedicated to promoting and protecting the interests of Australian women, including intellectual, cultural, political, social, economic, legal, industrial and domestic spheres, and ensuring that the aims and ideals of the women's movement and its collective wisdom are handed on to new generations of women. NFAW is a feminist organisation, independent of party politics and working in partnership with other women's organisations.

The terms of reference of this inquiry are extensive, however we particularly note that the inquiry is focussed on matters that are within the scope of the Victorian Government.

The National Foundation for Australian Women has been engaged in a program of work that looks at workforce conditions for women, including many of the areas referenced in the terms of reference of this enquiry. In particular we have engaged with the Federal Parliamentary inquiry in relation to insecure work; and in 2020 we commissioned modelling on the economic effects of supporting carers with additional government-funded service delivery and higher wage growth in the child care, aged care and disabled care sectors, both of which are attached (Attachments A & B). The key finding of the latter study was that investing in the three identified areas of care will increase GDP significantly for a relatively low cost to government.

Our review of the policies and commitments made by the Victorian Government indicate that it has already commenced action in many of the recommendations that we have made in the attached recommendations to the Commonwealth, making the State a leader in its commitment to gender equity. However the Victorian Government should increase its commitment to essential service workers, providing funding to support equitable remuneration and long-term employment relationships that will attract and retain skilled health workers and carers across the aged care, child care and disability care sectors. We note that recent Victorian budgets have provided funding to social infrastructure and training, although we still have concerns that workers in the care sector remain underpaid relative to the important work that they perform.

We believe that the Victorian Government would also accept that its responsibilities in employment extend outside its direct jurisdiction. The government has recently reiterated that, as a state that has referred most of its industrial powers to the Commonwealth ['Victoria has a strong interest in advocating for an industrial relations system which is based on consultation, cooperation and good faith bargaining, underpinned by a safety net of fair employment conditions'](#). This being the case, the Government has a role to play in engaging in the aged care work value case to support the claim currently before the Fair Work Commission. For the same reasons, it should also consider making a late submission to the Early Childhood Education and Care Equal Remuneration and Work Value Case. Finally, it should also examine the gender workforce issues in Victorian universities, which have been decimated over the last 18 months.

We congratulate the Victorian Government on their moves to improve gender budgeting processes, and have engaged with the Victorian Public Accounts and Estimates Committee in respect of their inquiry into Gender Responsive Budgeting (Attachment C). We also recognise the commitment to gender equality expressed in the Victorian Gender Equality Act. We particularly note the requirement for entities to undertake a gender impact assessment and prepare a Gender Equality Action Plan although it is, as yet, too early to assess the effects of the requirements of the Act.

Many of the matters that we have raised in the attached submissions have been addressed in the Victorian Public Service Enterprise Agreement, for example the payment of superannuation on parental leave entitlements. We note that although this Enterprise Agreement only applies to

workers employed by the government directly, the Gender Equality Act is broader as it encompasses all public entities. Accordingly, the Victorian Government has a role in ensuring that gender equity is addressed in the working conditions for employees in those entities. We also note that an audit into the engagement of fixed term and casual workers in the Victorian public service is currently underway.

We note that in the last two Budgets the Victorian Government has increased funding to the TAFE sector to provide free and subsidised places at TAFE and have earmarked funding for the specific training needs of teachers, kindergarten teachers and the healthcare workforce. This training should also extend to other care workers, particularly Aged Care workers, in accordance with the recommendations of the Aged Care Royal Commission.

Finally, we note that the Victorian Government has recently responded to the Inquiry into the Victorian On-Demand Workforce, with all of the recommendations supported in full or in principle. As action is taken to implement these recommendations, the potential for gendered consequences must be taken into account.

The Effect of COVID on Gender Equity

The effects of COVID on women over the last 18 months is well recognised.

Women were among the first to lose work during the pandemic. Although women's employment bounced back quickly, women are still overrepresented in part time and casual work. Women are also disproportionately represented in frontline crisis response roles: 80 per cent of health professionals (including medical workers, pharmacists, social workers and medical scientists) are women. Seventy per cent of pathology services are provided by women. Women predominate in most of the essential support services and among the workers that cannot stay home: the teachers, aged and childcare workers and hospital cleaners. Social services are under pressure from the virus and most social service providers are women: social workers, mental health support workers, frontline domestic and family violence workers, child support workers.

Women carry [the greater share of increased unpaid caring responsibilities](#) during lockdowns and staged recoveries, including the snap lockdowns that remain a feature of the post COVID recovery phase. When schools close, travel is restricted and aged relations are at risk, COVID-19 exacerbates existing inequities. Families may now prefer to keep aging parents out of the aged care system, adding to the caring responsibilities of women. When schools close and other childcare arrangements, such as assistance from family and friends, are restricted due to social distancing measures, single mothers in particular will have less ability to work and are at greater risk of poverty. We have also attached our recommendations in respect of support for women working remotely (Attachment D).

In short, women are losing paid hours and gaining unpaid hours, and these outcomes are causally related. All of this should ring alarm bells for any government that believes [increasing women's workforce participation leads to better living standards for individuals and families, improves the bottom line of businesses and is a significant driver of national economic growth](#).

In our view, this inquiry offers an important opportunity to ensure that post-pandemic Australia is better served by its policy settings than pre-pandemic Australia.

While much of our work has been focussed on policy solutions that would be within the remit of the Commonwealth, the following recommendations are matters that are also within the scope of the Victorian Government:

Recommendations:

We recommend that the Victorian Government should

- 1) Direct Treasury and other relevant government agencies to prepare a Women's Recovery Plan, presenting an overarching economic response to the effects of COVID on women;
- 2) Take a lead in supporting the more equal division of paid work and unpaid care between women and men by:
 - a) Developing campaigns to support families more equally share unpaid work
 - b) Applying a gendered lens when implementing the recommendations of the Victorian On-Demand Workforce; and
 - c) Ensuring that decisions in respect of flexible remote working are made in consultation with the affected employees individually.
- 3) Ensure that public service agencies and government entities comply with their obligations as employers by ensuring all remote workplaces meet workplace health and safety standards and the working from home safety and wellbeing checklist.
- 4) As a provider of care services through public entities and agencies:
 - a) Government should support the current Aged Care Work Value Case, and consider making a late submission to the Early Childhood Education and Care Equal Remuneration and Work Value Case.
 - b) Make changes to regulatory oversight of government-funded caring activities in the aged care and disability care sectors to address intersecting interests of quality of care and quality of employment laid out in Vol 3A of the report of the Aged Care Royal Commission.
 - c) Ensure that free or subsidised training is available to support the childcare, aged care and disability care sectors, both for new workers entering the industry and for professional development for workers currently employed in the care sector.
- 5) Provide legislatively for its Parliamentary Budget Office to take on the task of preparing Victoria's annual Women's Budget Statement. The legislation should mandate comprehensive budget coverage, that is, coverage that identifies both the positive outcomes and the negative impacts of their activities to achieve gender equality.

Attachments:

Attachment A: NFAW (2021): Submission to Senate Select Committee on Job Security

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity/Submissions

Attachment B: Dixon J (2020) *Appendix A: Simulations of increased government expenditure in the care sectors*

Commissioned for NFAW Gender Lens on the Budget 2020-21 <https://nfaw.org/policy-papers/gender-lens-on-the-budget/gender-lens-on-the-budget-2020-2021/>

Attachment C: NFAW (2021) Budget 2021 – Employment: Working From Home Overview NFAW Gender Lens

on the Budget 2021-22 <https://nfaw.org/policy-papers/gender-lens-on-the-budget/gender-lens-on-the-budget-2021-2022/>

Attachment D: NFAW (2019) Submission to Public Accounts and Estimates Committee

Victorian Parliament of Victoria: Inquiry into Gender Responsive Budgeting

https://parliament.vic.gov.au/images/stories/committees/paec/Inquiry_into_Gender_Responsive_Budgeting/Submissions/09_National_Foundation_for_Australian_Women_Redacted.pdf



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Senate Select Committee on Job Security

The impact of insecure or precarious employment on the economy, wages, social cohesion and workplace rights and conditions

Prepared by: Dr Kathy MacDermott, Professor Helen Hodgson, Sally Moyle, Frances Davies and Jennifer Bushell

March, 2021

Authorisation

This submission has been authorised by the NFAW Board

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Submission to the Senate Select Committee on Job Security's Inquiry into the impact of insecure or precarious employment on the economy, wages, social cohesion and workplace rights and conditions

This submission is being made by the National Foundation for Australian Women (NFAW).

NFAW is dedicated to promoting and protecting the interests of Australian women, including intellectual, cultural, political, social, economic, legal, industrial and domestic spheres, and ensuring that the aims and ideals of the women's movement and its collective wisdom are handed on to new generations of women. NFAW is a feminist organisation, independent of party politics and working in partnership with other women's organisations.

Insecure employment affects women and men in different ways; it is not gender neutral. This submission responds to the Inquiry's terms of reference through a gender lens.

The displacement of secure by insecure work is not due to a single factor such as growth in casual work. It is a constructive impermanency based on multiple strategies driving and enabling employers to maximise numerical flexibility, maintain a constant downward pressure on wages and side-step the responsibilities of the National Employment Standards.

Historically, it has relied on leveraging women's characteristic employment patterns, calling them 'non-standard' and treating them as atypical. They are typical for women. Nevertheless, the greater deviation from the male-dominated 'standard employment relationship' the less protection there is for workers (Vosko 2007; Vosko and MacDonald 2009).

It is critical not to allow the word 'flexibility' to be used to confuse employer-defined flexibility with flexibility for workers with family responsibilities. They are very different things.

The impact of insecure employment shows itself in the employment data, in COVID-linked risks, and in reduced income and housing security, and in each context women are most likely to suffer from ongoing structural defects in the current policy settings, and an unwillingness to rise to new ones.

Following our initial overview, we have **focused on how these issues are worked out in the feminised and less well researched care sectors—aged, disability and child care.**

Recommendations

Recommendation 1: Data collection and analysis

The Government should

- ensure better data collection to capture alternative and insecure forms of work, including labour hire, sham contracting and gig work.

- better monitor and report on risks of insecure work and exploitation among particular groups in Australia’s workforce, including disaggregating data by disability, indigeneity, ethnicity and visa status with a view to better protecting those segments of the workforce that are particularly vulnerable to insecure work; and
- direct the Office for Women, the Australian Bureau of Statistics and other relevant government agencies to prepare a Women’s Recovery Plan – a coordinated program of work to identify differential impacts on women and men, track emerging gender inequalities and pursue new opportunities through this crisis to address existing inequalities. All relevant data and research should be made publicly available in real time so that civil society and women’s organisations are able to contribute to the public discussion.

Recommendation 2: systemic measures

The federal Government must take a lead in supporting the more equal division of paid work and unpaid care between women and men by:

- legislating for stronger protections from sexual violence in work and strengthening the response by government in relation to its own parliamentary and public service workforces
- legislating, as recommended in this submission, to reduce the incidence of insecure work and better protect workers
- developing campaigns to support families more equally share unpaid work
- providing leadership to create stronger norms and culture of gender equality.

The federal Government should better focus federal budgets towards ameliorating women’s greater workforce disadvantages.

Specific measures

Recommendation 3

The Federal Government take a strong and decisive lead in national system reforms to achieve fair conduct and certainty for gig workers, including:

- clarifying and codifying work status to reduce uncertainty about status and the application of entitlements, protections and obligations for workers and businesses;
- aligning work status across workplace laws (including employment, superannuation and workplace health and safety laws);
- establishing a Streamlined Support Agency to provide advice and support to self-employed platform workers;
- establishing a specialised body to assist in resolving disputes about work status;
- promoting fair conduct for platform workers by establishing Fair Conduct and Accountability Standards;
- improving existing unfair contracts remedies for platform workers; and

- introducing enhanced enforcement to ensure compliance with laws.

Recommendation 4

That the express needs and circumstances of female gig workers – particularly in relation to unequal pay and the unequal burden of caring responsibilities – be taken into account when developing national approaches to achieve fair conduct and certainty for gig workers.

Recommendation 5

The \$450 monthly earnings threshold for the superannuation guarantee should be repealed.

Recommendation 6

The 30-hour exemption in s.11 (2) of the Superannuation Guarantee Administration Act for work that is wholly or principally of a domestic or private nature should be reduced to 10 hours per week.

Recommendation 7

NFAW welcomes the requirement that the recently passed casualisation provisions be reviewed, and recommends that the review consider instead:

- the insertion in the Fair Work Act (FWA) of a new objective definition of casual *employment* in which employment status is determined by post-contractual employment history as well as the nominal employment contract itself;
- *an amendment* to the FWA requiring that casual workers who have been with the same employer for a year and in regular shifts for six months must be offered permanent employment;
- the development of portable leave schemes for casual employees with an offsetting mechanism for casual loadings.

Recommendation 8

Funding should be made available for an urgently needed report on the operation of ‘flexibility’ provisions in awards and agreements before further flexibilities are introduced through ‘modernisation’ and enterprise bargaining.

Recommendation 9

The ‘flexibility’ provisions of the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2021 addressing part-time and casual work should not be reintroduced.

Recommendation 10

‘Job security’ and ‘gender equality’ should be inserted into the objectives and tests of the award review process in the Fair Work Act.

Recommendation 11

NFAW strongly supports recommendation 84 of the Aged Care Royal Commission calling for a conjoined tripartite application for equal remuneration in the Aged Care Award 2010, the

Social, Community, Home Care and Disability Services Industry Award 2010 and the Nurses Award 2010.

Recommendation 12

NFAW strongly supports Recommendation 85 of the Aged Care Royal Commission that ‘In setting prices for aged care, the Pricing Authority should take into account the need to deliver high quality and safe care, and the need to attract sufficient staff with the appropriate skills to the sector, noting that relative remuneration levels are an important driver of employment choice.’

Recommendation 13

In order to balance employer-oriented and employee-oriented flexibilities in award-setting, we recommend:

- amending the Fair Work Act to insert ‘job security’ as a principal object of the Act as a whole and the wage-setting, award review and contractor testing processes, and
- inserting ‘gender equality’ into the objectives and tests of the award review process.

Recommendation 14

Recommendation 19 below--calling for labour-hire providers to be required to guarantee the same pay and conditions to the workers it supplies as are being provided to employees of the contracting firm doing the same work – should explicitly be taken to apply to migrant workers.

Recommendation 15

NFAW recommends that government replace its current blunt cap on APS staffing with a cap on back-to-back short-term contracts for the same role.

Recommendation 16

NFAW endorses recommendation 85 of the Aged Care Royal Commission which calls on providers to preference direct employment of personal care and nursing service workers, as well as quality reviews of compliance with this arrangement. Corresponding measures be taken to address the growth of contracting and gig economy employment in the disability sector.

Recommendation 17

The Fair Work Act should be amended to lower the intent threshold in relation to misrepresenting employment as an independent contracting arrangement.

Recommendation 18

Victims of sham contracting should have access to the same court and tribunal proceedings as those proposed for victims of wage theft more generally, simplified along the lines recommended by NFAW in its [submission to the Fair Work Amendment \(Supporting Australia's Jobs and Economic Recovery\) Bill 2020](#) (submission 82, recommendation 14).

Recommendation 19

Labour-hire providers should be required to guarantee the same pay and conditions to the workers it supplies as are being provided to employees of the contracting firm doing the same work.

Recommendation 20

The labour-hire firm licensing scheme to be implemented at the Commonwealth level should at a minimum identify home-based care in both the disability and aged care sectors among the high-risk sectors to be covered by the scheme.

Recommendation 21

NFAW recommends that, in addition to the broader set of recommendations made in relation to procurement under Term of Reference (g) (Recommendation 22 below), government should recognise its responsibilities as the top of the supply chain body in publicly funded social care systems by:

- making changes to regulatory oversight of government-funded caring activities in the aged care and disability care sectors to address intersecting interests of quality of care and quality of employment laid out in Vol 3A of the report of the Aged Care Royal Commission, and
- increasing funding in the caring sector as proposed in Recommendation 84 of the Aged Care Royal Commission and more broadly in [the NFAW 2021 Pre-budget submission](#).

Recommendation 22

NFAW recommends that:

- the Department of Finance develop a consistent definition of employee;
- discussions be held with existing Free Trade Agreement partners to include a broader employment equity exemption and ensure that future agreements include broader employment equity exemptions;
- government require that a detailed analysis of employment in contracts with a high labour content be published annually; and
- the Department of Finance develop clear compliance requirements relating to social procurement and an evaluation framework.

Discussion

a) The extent and nature of insecure or precarious employment in Australia

The Australian workforce has clearly changed over the last two decades, with a movement away from employment in traditional industries such as manufacturing based on full time, unionised work, and towards more part time, casual, contract or gig work in service industries.

This has happened at the same time as there has been a concerted reform of industrial relations systems that has tipped the power balance towards employers for a significant proportion of Australian workers and, over the last decade, an almost flatlining of wages in real terms.

These trends have given rise to concern about increases in precarious employment. The levels of precarity in the Australian workforce are still at times a matter for debate, though, largely because of lack of agreement about the definition of precarious work.

Precarious work can be described as “...uncertain, unstable, and insecure and in which employees bear the risks of work (as opposed to businesses and government) and received limited benefits and statutory protections” (Kalleberg and Vallas 2017, p. 11). Yet what this entails and where its limits lie can be [difficult to ascertain and agree](#).

One way of defining precarious work would be to consider a few factors as a proxy for precarity, such as the rates of casual employment, some forms of self-employment and multiple job holders. Others note that the concept should be considered as multidimensional, including subjective assessments, seeking “... to encapsulate not only the inadequacy of working hours and employment benefits, but other dimensions such as insecurity of the job itself or a lack of employment rights and entitlements.” (Cassells et al, 2018a, p. 10 and Cassells et al, 2018b).

It is also important to unpack the demographics of the phenomenon of precarious work since workforce level trends can often obscure inequalities and gaps.

Whether precarious work is increasing in Australia depends on which of these characteristics are assessed. NFAW considers it is important not to underestimate the complexity of the notion of precarious work but to make a multi-dimensional and segmented assessment of its incidence and trends. While this makes it more difficult to assess, it is important to recognise the nuances of the phenomenon and the lived reality for workers.

However it is defined, it is important to note that in 2018 – for the first time ever – “...less than half of employed Australians work in a permanent full-time paid job with leave entitlements” (Carney and Stanford, 2018, p 1).

This section will consider some of the key elements of precarious work, with a gender lens wherever possible, before reaching some conclusions about the trends and issues.

- **The gendered workforce**

Australia's workforce remains highly gendered. Prior to the COVID pandemic upending the Australian labour market, in January 2020 the trend workforce participation rate was a steady 66 % of the Australian population. The female participation rate was 61.4 %, while the male participation rate was 70.9 % (ABS, 2020a).

The trend participation rate for workforce age Australians (15–64-year-olds) was 78.8%. The Australian Bureau of Statistics noted “...[the long term convergence](#) of male and female participation” with male participation rates in this age group at 83% and women's at 74.5 %.

The participation rate was lower for women in all age groups compared to men in those age groups, except for those aged 15- 19 years.

The OECD and ILO have suggested that, in G20 nations, “[t]he gender gap in earnings and in the incidence of low pay are partly explained by gender segregation by occupation, with women more crowded into lower paying occupations than men” (OECD and ILO 2019, p. 11). The authors also note that:

[p]art-time and temporary work can be an important means for women to integrate into the labour force. However, especially when involuntary, these forms of work may be associated with lower hourly wages than full-time work, lower social security benefits and fewer training opportunities, which jeopardises women's chances to obtain better-quality jobs. (p 12)

Overall, in Australia, the gender pay gap in 2020 still stands at [13.4% when calculated based on full time, ordinary time earnings](#) for women and men. Clearly, the gap for overall earnings for women and men, taking account of women's greater part time work and lower discretionary and overtime pay, is greater than this.

The Workplace Gender Equality Agency notes that Australia's workforce remains highly sex segregated, and that “[\[a\]verage remuneration in female-dominated organisations is lower than in male-dominated organisations.](#)”

Female dominated occupations have grown generally at a greater rate than male dominated industries, with Health Care and Social Assistance growing at almost three times the pace of employment growth across all sectors (Cassells, 2018a).

There are links between segregation by sex and access to part time work, with part time work less likely to be available in male dominated than female dominated or mixed occupations, but it remains unclear how the causation runs – whether “[women avoid occupations where part-time work is less likely to be available, or that part-time work is more likely to be supported by employers in female-dominated occupations](#)”.

The Australian workforce has seen a steady increase in part time work. Those who work for less than 38 hours per week accounted for nearly a third of all employees, at 32% in 2018, up from a little over 10% in 1996 (Alexander, 2019, p 3).

The proportion of men working full time decreased from 95% to 81% between 1978 and 2018. “In this same period, the share of women working full-time fell from around two-thirds to half” (Cassels et al 2018a, p viii). While part time work has increased more rapidly among men over the last five years, it is clearly coming from a much lower base (Carney and Stanford 2018, p 7).

Part time work is, of course, often associated with higher levels of unpaid caring work and is highly gendered. For parents whose youngest dependent child was under six, three in five employed mothers worked part time compared to less than one in ten employed fathers (ABS 2020b).

Part time work, in itself, is not considered to be a measure of precarity. It has enabled women’s rapid entrance into the workforce over the last several decades, while they continue to be responsible for the bulk of unpaid care and domestic work. However, rapid increases in part time work can point to underemployment and underutilisation if the hours are not the preference of the worker.

In fact, in 2017, 27% of part time workers would have preferred to work more hours, with more men than women preferring more hours. This high proportion points to a lack of full-time opportunities, “...rather than to a preference by workers for part time schedules” (Carney and Stanford 2018, p 8). In 2020, the labour force underutilisation rate in Australia in 2019–20 for those aged 20–74 years old was higher for women, at 15.1% than it was for men, at 12.1% (ABS 2020b).

- **Casual work**

Alongside the increase in part time work, casual work has burgeoned in Australia. In August 2020, there were 2.3 million casual employees in the Australian workforce, representing 22% of employees, down from 2.6 million, or 24% in February 2020 (ABS 2020c).

Part time work is strongly associated with casual employment, with most part time jobs being casual. One in eight full time positions were also casual in 2017, however. Carney and Stanford note that “[a]s with part-time employment, the incidence of casual work is higher among women (27 per cent in 2017), but it is growing twice as fast among men” (Carney and Stanford 2018, p. 10).

In 2019, for all employees aged 15 years and over, the gender gap in casual work was continuing to close, with 26.4% of women in casual employment compared to 22.5% of men (ABS 2020b, based on access to paid leave entitlements). Women in their reproductive years were the most likely to be employed casually, at 36.3% for women aged 15-34, compared to men, where those aged 65 years or older were most likely to be employed casually, at 38.1%.

The original intention of casual employment was to provide a pool of short-term appointments, yet over half of casual employees are engaged for over a year, and 15% for more than five years (Rawling, 2015, p 252).

Many workers benefit from the flexibility of casual work, but for many others, this flexibility is illusory, as the ability to refuse work is tied strongly to its ready availability and the goodwill of the employer. Casualisation arguably exerts downwards pressure on the wages,

conditions and job quality of all employees, not just casuals, and there is “...a clear association between precarious work and a deterioration in wages and working conditions” (Rawling, 2015, p 253).

It is worth noting that casual work is not the domain only of low skilled, low paid occupations. The education sector in Australia relies heavily on casual or fixed term employment. In Victoria, for example, [a record 68.7%](#) of staff were employed as casuals or on short-term contracts in 2020. Education and Training is an industry with one of the highest proportions of women aged 20-74, with a 71.4 % female workforce (ABS 2020b).

- **Fixed term contracts**

In addition to casual work, other forms of insecure work have become another increasingly prominent feature of the workforce, with a 2015 estimate suggesting that at least 20 % of all workers comprise independent contractors, labour hire workers and fixed-term contractors (Rawling, 2015, p 252).

Fixed term contracts include leave provisions, but those employees may have fewer rights to secure employment. While the courts have interpreted these contracts so as not unreasonably to exclude unfair dismissal claims,¹ employees on fixed term contracts may feel themselves to be more insecure in their employment, and in many cases they are.

Once again, women are over-represented amongst workers on fixed term contracts. “This is primarily due to the fact that women dominate industries in which fixed-term contracts are concentrated” (Alexander 2018, p 6). In organisations and industries where there is a high proportion of employees on fixed term contracts, women are more likely to predominate amongst those on contract Alexander 2018, p 6). This exacerbates inequities for women workers in terms of career development and security.

- **Independent contractors and sham contracting**

There has been a significant increase in independent contractors within the Australian workforce over the last two decades, and a rhetorical focus by successive governments on encouraging entrepreneurialism. In August 2020, there were one million independent contractors in the Australian workforce, representing 8.2% of the workforce (ABS 2020c).

Clearly the opportunity to own and run one’s own business is welcomed by many Australians, and many value the autonomy and flexibility that working on one’s own account confers. This is particularly important for many women who are seeking to balance paid work and family responsibilities.

However, there is evidence that for many workers, independent contractor status is a form of insecure employment. The Centre for Future Work has estimated that “...almost two-thirds of self-employed workers are not incorporated, and almost 60 per cent have no employees (meaning their access to time off work or continuing income in case of illness is minimal)” (Carney and Stanford 2018, p 11). The Centre for Future Work has also estimated that “...median earnings for part-time self-employed individuals with no employees were 60 per cent lower than for full-time paid employees”.

¹ See for example *Khayam v Navitas English Pty Ltd [2017] FWCFB 1524*.

Many unions and academics are concerned that a significant proportion of the independent contractors in the workforce are operating as sham contractors, when they are really dependent on one head contractor and in effect are employees working in insecure arrangements.

As we shall argue later (Term of Reference (e)) Sham contracting is an unlawful method of disguising an employment relationship as an independent contracting arrangement (s. 357 *Fair Work Act 2009* (Cth)). This works to the competitive advantage of employers who reduce their labour costs at the expense of their workers' legitimate entitlements and rights to security.

- **multiple job holders and the gig economy**

The prevalence of workers with more than one job has remained stable over the last ten years at around eight %. According to Cassells et al (2008a, p ix) “[w]omen and younger workers are more likely to hold multiple jobs. Around 17% of women aged 18 to 24 and a tenth of women aged between 25 and 34 have two or more jobs.”

However, it appears the traditional data collections are missing gig economy data. A recent paper by the Actuaries Institute suggests that the gig economy may have grown nine-fold between 2015-2019 to \$6.3 billion and may engage up to 250,000 workers. The Institute notes that the magnitude is difficult to measure because of the limitations of traditional and ABS data collections (Actuaries Institute 2020, p 4).

Gig workers do not receive salaries but are paid for the services or 'gigs' they perform (Parliament of Victoria 2018).

The gig economy encompasses a range of skill sets from highly skilled consultants and artists to home food delivery or personal transport drivers who are in very low paid, low skilled work. All share income insecurity, but some might well be winners, even with higher anxiety about their economic futures. For example, the *Harvard Business Review* (Petriglieri et al 2018) published qualitative research about gig workers in the US, who were artists or knowledge workers.

All those we studied acknowledged that they felt a host of personal, social, and economic anxieties without the cover and support of a traditional employer — but they also claimed that their independence was a choice and that they would not give up the benefits that came with it. Although they worried about unpredictable schedules and finances, they also felt they had mustered more courage and were leading richer lives than their corporate counterparts.

Other gig economy workers, however, are at the bottom of the heap, and suffer insecure work without the same benefits. Many earn less than the minimum wage and lack guaranteed work or pay (Parliament of Victoria 2018, p 3). The Actuaries Institute research paper finds “...workers who spend five to 10 years of their productive labour years participating in the gig economy may be between \$48,000 or \$92,000 worse-off in superannuation savings at retirement” relative to a minimum wage employee (Actuaries Institute 2020, p 30).

It is important to tease out the bifurcated nature and the different experiences within this term. And we need to better tailor our regular data collections to capture this form of work

and its trends. For example, the ABS captures the numbers of independent contractors, who comprise around a stable 8% of total employed people. And it captures those with multiple jobs. But together, these fail to capture the emergence of the gig economy.

As a result, there is little information about the demographics of this form of work. It does affect younger workers more than older workers and it is highly gender segregated. Recent research concludes that “[m]en dominate platforms which specialise in what might be considered traditionally male tasks like transport and women dominate platforms which specialise in more traditional female tasks like caring” (Churchill and Craig 2019). This research suggests women engage in the gig economy more for its support for their management of family responsibilities, whereas men seem to use gig work to supplement their incomes (Churchill and Craig 2019). Around one in five women described the money earned from gig work as a source of income while they looked for more permanent work, pointing to financial precarity from gig work (Churchill, Ravn and Craig 2019).

Likewise, the law has failed to keep up with the emergence of this phenomenon. Jurisprudence is beginning to emerge that reclassifies workers as employees who were originally classified as contractors.² It is clear there is a role for the legislature to address this issue further. The President of the Fair Work Commission has noted “[p]erhaps the law of employment will evolve to catch pace with the evolving nature of the digital economy. Perhaps the legislature will develop laws to refine traditional notions of employment or broaden protection to participants in the digital economy” (Parliament of Victoria 2018, p 7). Both are needed.

- **Labour hire and supply chain issues**

Labour hire companies have been part of the Australian labour landscape for decades. Currently around 3% of employees are registered with a labour hire firm or employment agency (ABS 2020c). Labour hire arrangements can be a valuable source of flexible, short term employment and help employees to gain a foothold in an industry or position. Again, it is very diverse, covering highly skilled professional and knowledge workers as well as entry-level, unskilled workers (Black Economy Task force 2017, p 204).

There is little information about the demographic characteristics of labour hire employment, although it is clear there are some industries and sectors where it is more prevalent, or represents a significant proportion of the permanent workforce, such as in horticulture, agriculture, mining, construction and cleaning (Hepworth 2020).

Parts of the labour hire industry operate unscrupulously or unlawfully to exploit vulnerable workers, up to and including forms of modern slavery, but also including higher injury rates and lower levels of investment in training and development for labour hire workers than permanent employees (Hepworth 2020).

Hepworth notes that

[w]hile casual work and labour hire are distinct categories of precarious work, there is significant overlap between these categories. In the commercial cleaning sector, most - if not all - contract cleaners are also casual. (p 15)

² See for example, in the UK context, *Aslam & Ors v Uber BV & Ors* UKET 2202551/2015; upheld in *Uber v Aslam & Ors* UKEAT/0056/17/DA, 20 November 2017.

Longer and more complex supply chains contribute to this unlawful or unscrupulous behaviour, where multiple intermediary parties to insulate themselves from liabilities towards workers. “The obligations of the lead firm are passed down the chain and each commercial entity takes its cut of profit. Inevitably the parties near the base of the chain often have low profit margins and experience intense competition, necessitating the engagement of cheaper, precarious labour” (Rawling 2015, p 253). In this vacuum, exploitative and even illegal supplier practices can thrive.

With more complex supply chains, it can be difficult for even well-intentioned contractors to identify poor practices.

- **Perceptions of precarity**

It is important to consider workers’ own assessments of the insecurity of their employment in identifying precarious work in Australia. [As Jeff Borland notes](#), “...workers’ beliefs about their job security are not misguided. They are reflecting the reality of the labour market in Australia.”

The Household, Income and Labour Dynamics Survey Australia (HILDA) tracks a number of criteria that are useful for assessing workers’ feelings about the security of their employment: self-reported probability of losing one’s job in the next 12 months and self-reported dissatisfaction with job security. Cassells et al (2018a, p 29) note that “[t]he proportion of workers that are dissatisfied with their job security has been rising in recent years, but remains at below that of 2003 levels, for both men and women”. They also note that:

[w]orkers in low-skilled occupations report low levels of satisfaction with their job security compared to those in high-skilled occupations. Employees of their own business are significantly happier than other workers. Casual workers are much less satisfied with their jobs than those with permanent and fixed term contracts.

The Australian Bureau of Statistics tracks numbers of workers who do not expect to be working for their current employer in 12 months, and in August 2020, 9.2 % did not expect to be working for current employer in 12 months (ABS 2020c).

Many in the Australian labour force may also reflect on the uncertainty about their economic future that Australia’s stagnating wages suggests. Even prior to COVID-19, and from 2012 onwards, “...annual wage increases have decelerated to the slowest pace in decades” (Carney and Stanford 2018, p 3). Among women working casually, for example, wages increased by only 1.7 % between 2010 and 2016 (Cassells et al 2018a). In short, “[f]or years, relatively positive unemployment statistics have masked the nature of insecure work in Australia. Today, more Australians feel uncomfortable in their position at work, in their ability to make ends meet than at many times in Australia’s past” (Alexander 2018, p 15).

- **Discussion**

While there is some disagreement about the degree and nature of precarious employment in Australia, most commentators and academics agree that job insecurity has risen in recent years. It is clear that, while the rate of precarity is increasing for both women and men, it is

increasing more quickly among men. However, women still work in more precarious employment overall (see for example Cassells et al 2018).

It may also seem that rates of precarious work have not increased as much as the perception of precarious work, yet it is also the case that aggregated data for the whole workforce have been obscuring an increasingly bifurcated workforce, with clear winners and losers. It seems that regular data collections are failing to elucidate the current situation for some groups of insecure workers.

Many of the industrial and workplace relations changes that have been introduced since the 1990s have led to new forms of work. While they have been useful for some, there are pockets and segments of significantly insecure work. It is the role of government to ensure that we are not seeing growing inequality and pockets of significant disadvantage, particularly on gender lines.

This bifurcated workforce is having, and will continue to have, effects on superannuation outcomes and retirement incomes for many Australian workers. Part time workers with broken working patterns will continue to fail to accrue sufficient superannuation to retire comfortably. Independent contractors and gig workers may fail to accrue any superannuation guarantee payments, leading to inadequate retirement incomes. Our highly gendered superannuation system, based on a traditional standard male working life, is becoming even less fit for purpose, and it should be reconsidered, so that all Australians, particularly those who spent significant portions of their lives caring for others, do not retire into poverty.

There are significant divisions across age groups, with increased precarity a reality for younger workers. While younger workers are experiencing the greatest degree of precarity, it is unclear whether these workers will 'graduate' to more secure work as they gain experience in the workforce. We do not have adequate information about whether this group of workers will remain entrenched in less secure employment throughout their careers. Even if it is a 'rite of passage' for younger workers, this does not justify the increase in precarious employment that these younger workers face. It appears the "...uncertainty of the education to-work nexus and precarious work in general is having a significant impact upon how young people construct their identity and imagine their futures, which is heavily classed and gendered" (Churchill, Rayn and Craig 2019).

Meanwhile, the gender gap in precarious work may be decreasing, as men's work becomes increasingly precarious. The gender gap remains, however, with women much more likely to be employed in precarious work. Research suggests that:

...young women ...are hopeful about the opportunities in the gig economy era and into the future, but find that the gains in education do not necessarily advantage them in the current labour market, forcing them not only into gig or gig-like work but also highly gendered roles at home. (Churchill, Rayn and Craig 2019)

It is vital that government take steps to get in front of this issue to deliver continued progress towards gender equality, rather than seeing some groups of workers locked out of

secure work and falling back into traditional gender norms that will continue to hold back the economy and gender equality.

A useful approach would be for labour market reform to encourage flexibility that works for both worker and employer, and promotes innovative working practices, but which protects workers most at risk of exploitation and marginalisation “...through a ‘regulated flexibility’ which provides flexibility for employers and security and dignity for workers” (Rawling, 2018, p 255).

In 2019, the OECD and ILO made a number of recommendations aimed at increasing women’s workforce participation in G20 nations generally. These recommendations include that governments should:

- increase access to leave provisions for all workers
- change the stereotypes and norms around unpaid work and care, so that women and men can better share this work and remove one of the major impediments to women’s participation in quality paid work
- reduce gender segregation in the workforce, and
- improve the evidence base on the gender gaps in employment.

Importantly, they also recommend that governments ensure “...non-standard forms of employment do not weaken employment rights” generally (OECD and ILO 2019, p 4).

It is important for government to support and protect vulnerable workers and promote gender equality in the workforce, including to enable women and men to better share the unpaid workload. Otherwise, we will merely exacerbate the gendered workforce and unpaid work at home and further entrench harmful gender norms. This will interfere with women’s engagement in paid work, their productivity at work and their security in retirement.

b) the risk of insecure or precarious work exposed or exacerbated by the COVID-19 crisis

- **Australia has generally done well**

Australia has fared better than most other nations through the COVID-19 pandemic. Yet some worrying trends are emerging. Women have suffered particularly, and their workforce engagement has been particularly affected. As usual with shocks, the pandemic revealed but also exacerbated inequalities that already existed. Far from securing a stable economy and community, these increasing inequalities threaten Australia’s social cohesion and co-operation at a time when they are most needed.

The [OECD notes](#) that Australia’s unemployment rate, recorded at 6.6% in February 2021, is better than the OECD average at 6.9%. The [ABS notes](#) that, by its calculations, in January 2021, the unemployment rate decreased 0.2 percentage points to 6.4 %. It states that, by January 2021, employment was only 59, 000 people lower than March 2020 nationally. Importantly, the underutilisation rate fell 0.6 percentage points to 14.5 %. This is now only

half a percentage point higher than its March 2020 level. Participation rates are also remaining strong, suggesting that there has not been a significant rise in people severing their ties with the labour market entirely.

These are all very positive signs. In no small part, these results are due to the introduction of the JobKeeper supplement.

- **But not all is well - insecurity appears to be increasing**

However, Australia has seen significant shifts in the composition of the workforce through the pandemic, and there are some groups who have borne the brunt of the pain. According to the [ABS](#), Casuals have suffered the most, with a drop of 3% in the proportion of casuals in the workforce. Casual workers were eight times more likely to lose their jobs than workers in permanent positions in the early months of the pandemic (Nahum and Stanford 2020). Workers who already suffered job insecurity and low incomes have been hardest hit (Nahum and Stanford 2020). The result, argue Nahum and Stanford (2020):

will be a step increase in the broad incidence of insecure work, setting the stage for further dislocation of labour in the future. Both on the way down, and on the way back up, therefore, this pandemic has highlighted the vulnerability faced by workers in non-standard jobs, and accelerated the trend toward insecure work. (p 3)

In part, casual work exists to provide employers with the flexibility to up- or down-scale their workforces, so arguably, the arrangements operated as intended. However, this was potentially accelerated, particularly in the early stages of recovery, in response to the JobKeeper exclusions relating to shorter term casuals.³

It also appears that insecure work is increasing again, as “[f]rom May through November, over 60 percent of all new waged jobs were casual positions...”, representing the fastest ever expansion in casual employment (Nahum and Stanford 2020, p 12).

It is positive that self-employment is also surging as the economy opens again, but Nahum and Stanford argue that the proportion of “...owner-managers in relatively insecure situations: without incorporation, without any employees, or both” is now greater than pre-pandemic (Nahum and Stanford 2020, p 15).

- **Not all sectors are affected equally - and that's gendered**

The pandemic economic downturn is obviously very different to other recessions, given the extent of the shutdown and the specific, targeted effects, with “...a radical short-term shift

³ Casuals who have worked for a business for fewer than 12 months (other than some New Zealanders), local council workers, workers in certain foreign-controlled businesses, employees at most universities and temporary visa holders were also excluded from the scheme. Women were disproportionately represented in the short-term casual roles that were currently ineligible for the JobKeeper support, especially those in the hospitality, health care and retail sectors.

in the mix of economic activities – of which an unknown, but possibly significant, amount will be persistent” (Costa Dias et al 2020, p 371).

The health sector has been the most affected by the pandemic, both in terms of increased workload and health risks.

A 2019 World Health Organization study of 104 countries that found women still dominate nursing and social care staff (70%), earn about 30% less than their male counterparts, and are more likely to be employed on a part-time or irregular basis (Boniol et al 2019, p 4). In Victoria, doctors comprised five % of health care worker COVID-19 cases between July and August 2020, with 63 doctors thought to have been infected during this period. Nurses comprised 40 %, and aged care workers comprised another 40 % (Smith 2020).

Workers in other sectors are also highly exposed to infection by reason of their work. Workers in retail, health or in caring roles, travel and transportation, entertainment and personal services, and other sensitive retail and manufacturing are exposed through workforce requirements and inadequate welfare structures (Zarkov 2020).

These roles are often undervalued and very low paid and during the pandemic workers faced increased stress, overwork and client or customer violence. This increased stress and risk is layered on top of concerns for job security, which evidence shows “...leads to workers coming to work sick and refusing to take time off’, that casual working arrangements “...represent a threat, not just to individual workers...but to the health of all Australians” (McGann et al 2012).

The Australasian Centre for Corporate Responsibility (ACCR) reported on labour hire and contracting in Australia in post-Covid-19 in May 2020. It found similar risks, such as precarious workers feeling fearful of losing their jobs, poor training generally and in the use of personal protective equipment, and low levels of reporting of safety and workplace breaches (Hepworth 2020). Workers in many forms of precarious or insecure work lack access to paid leave.

As we move through the pandemic, some sectors will see a permanent, or at least persistent, change.

Some fraction of those now turning to online deliveries may discover they like them and will continue using them, while the rapid development and adoption of virtual technologies may inflict a sustained drop in demand for air travel and a growth in jobs that utilise, or depend on, remote working or e-commerce. (Costa Dias et al 2020, p. 373)

This again may create winners and losers. Some sectors, and some workers, may benefit from these changes; others will find their work even more stressful and precarious, or find themselves without work in their sectors. It is important that government monitor these changes closely and protect the most vulnerable workers.

- **An intersectional approach is crucial**

The risks and impacts of any shock, including the COVID-9 pandemic, are not equally felt across any population, but are shaped by “...a web of intersecting factors including age, sex, gender, health status, geographic location, disability, migration status, race/ethnicity and socio-economic status...[P]rocesses and structures of power...create an interplay of advantages and vulnerabilities” (Hankivsky and Kapilashrami 2020).

Data are limited in Australia, but in the UK and the USA, there are alarming outcomes for Black and minority ethnic communities, both in terms of health and employment outcomes (Heilman, Castro Bernardini and Pfeifer 2020; see also Hankivsky and Kapilashrami 2020). Young people have been particularly harshly affected in Australia. Through the pandemic, over the 12 months to October 2020, youth unemployment increased by 3.1 %, nearly twice the increase in the overall rate (Maury et al 2020, p 5).

While Australia’s unemployment rate is comparatively low, “[i]t is likely that individuals are moving in to lower-paid, precarious employment, and thus are still dependent on income support” as well as being in some paid employment (Maury et al 2020, p 5). They estimate that about 1.5 million Australians, or about 10% of people of working age, received JobSeeker and the unemployed Youth Allowance in September 2020 (p 5).

Australia must do better in monitoring and responding to shocks, including the shock presented by the pandemic, on particular groups of workers in Australia, so that those facing particular vulnerabilities are protected. In the context of the COVID-19 pandemic, these vulnerabilities have affected not only those populations, but have had an impact on the broader community and Australia’s ability to contain the pandemic.

We are not “all in this together” because of the different levels of susceptibility to the pandemic that different characteristics present, but nevertheless, ultimately, the whole society is harmed by insecurity and vulnerability of any of its members.

Australia has failed to effectively address the particular vulnerabilities of some populations, and where we have acted, for example by providing paid covid leave, these have been insufficient.

- **Women have been hit hard**

Women were disproportionately employed in the sectors hit hardest by initial COVID-19 shutdowns in Australia, including retail, hospitality, and personal services. As noted, women are heavily concentrated in casual and part time roles, and these positions were eliminated first.

COVID-19 shutdowns significantly increased the amount of unpaid work, while paid work time was slightly lower. Early research has shown that the increased time burdens imposed by the COVID-19 shutdowns were greater for women, but “...gender gaps somewhat narrowed because the relative increase in childcare was higher for fathers”. Overall, however, women found it much harder to balance their paid work and family obligations through the shutdowns (Craig and Churchill 2020, p 66).

Many workers could relocate their work to the home, but many women found it too difficult to “...continue their paid jobs while caring for children at the same time, in the same place. This forced many women to reduce their hours of work, or to give up paid work altogether” (Nahum and Stanford 2020, p 18).

For all these reasons, women’s employment suffered most through the early stages of the pandemic. Employment for women declined almost 8% between February and May:

...more than 2 percentage points worse than the corresponding drop for men. And the rebound in employment since May has not closed this gender gap. As of November, women’s employment was still about 1.7% lower than in February. That cumulative decline in women’s employment was about 3 times larger than for men. (Nahum and Stanford 2020, p 18).

Analysis by Good Shepherd Australia and New Zealand points out that the gender gap in underemployment through the pandemic exploded, with women more likely to be underemployed than men before the pandemic, but at the peak of the lockdown in April 2020, “...the number of women in this situation more than quadrupled, to a full 66 per cent higher than the rate for men” (Maury et al 2020, p 9). By September 2020, Good Shepherd noted, the levels had reverted more closely to pre-pandemic levels, but a greater gender gap than previously remains (p 9).

In July 2020, the McKinsey Global Institute estimated that if we fail to respond to these gendered effects on employment through the pandemic, “...global GDP growth could be \$1 trillion lower in 2030 than it would be if women’s unemployment simply tracked that of men in each sector”. On the other hand, it noted, “...taking action now to advance gender equality could be valuable, adding \$13 trillion to global GDP in 2030 compared with the gender-regressive scenario” (Madgavkar, A et al 2020).

- **Risks of even more inequality in sharing unpaid care and domestic work – a slow burn issue**

McKinsey Global Institute notes that COVID-19 has increased women’s unpaid family workload globally, “...by an estimated 30 per cent in India and by 1.5 to 2 hours in the United States” (Madgavkar, A et al 2020). As noted above (Craig and Churchill 2020), it certainly seems to be the case in Australia. The McKinsey Global Institute concludes “...it is not surprising that women have dropped out of the workforce at a higher rate than explained by labor-market dynamics alone” (Madgavkar, A et al 2020).

Researchers in the UK have noted that:

[t]he way that couples divide paid work and household responsibilities during this crisis could have an effect that lasts long after the lockdown is lifted. If, on average, mothers are more likely to step back from paid work during this crisis (either voluntarily or through temporary or permanent job loss) and are more likely to pick up more of the domestic responsibilities, they could face a long-run hit to their earnings prospects. This risks reversing some of the progress that has been made on closing the gender wage gap. (Andrew et al 2020)

On the other hand, it is possible that the shock could result in a more equal division of labour between women and men, as many men are “...now at home all day with more exposure to the scale and scope of housework and childcare” (Andrew et al 2020).

In Australia, the combination of massive increases to unpaid caring and domestic work, predominantly shouldered by women, the greater harm to women’s workforce engagement due to their forms of work and sectors in which women work, as well as government policies that have hit women hardest, such as excluding shorter term casuals and early childhood education and care workers from access to JobKeeper and eliminating access to free early childhood education and care (ACTU 2020), when aggregated, raise a very serious risk that women will reduce their paid work or leave the paid workforce entirely, and that this will have permanent or at least persistent effects.

This is a very serious risk for Australia’s progress towards gender equality and for our economic recovery.

- **Discussion**

It is essential that the federal Government monitors and reports effectively on the trends and issues around insecure work -- particularly as we emerge from the COVID pandemic -- and intervenes to ensure the nation shows real progress towards gender equality and decent, secure work for all. Together, these outcomes will support Australia’s long term economic health.

Unfortunately, as the National Foundation for Australian Women’s Gender Lens on the Budget Report demonstrates year after year, the Australian Government is paying insufficient attention to gender issues in policy and the Budget.

This inquiry offers an important opportunity to ensure that post-pandemic Australia is better served by its policy settings than pre-pandemic Australia. There remains much to be done to ensure Australia is able to advance towards real equality between women and men.

The National Foundation for Australian Women reiterates the recommendation we have made in other contexts – that the Office for Women, the Australian Bureau of Statistics and other relevant government agencies should publish a Women’s Recovery Plan – a coordinated program of work to identify differential impacts on women and men, track emerging gender inequalities and pursue new opportunities through this crisis to address existing inequalities. All relevant data and research should be made publicly available in real time so that civil society and women’s organisations are able to contribute to the public discussion.

Recommendation 1: Data collection and analysis

The Government should

- ensure better data collection to capture alternative and insecure forms of work, including labour hire, sham contracting and gig work;

- better monitor and report on risks of insecure work and exploitation among particular groups in Australia’s workforce, including disaggregating data by disability, indigeneity, ethnicity and visa status with a view to better protecting those segments of the workforce that are particularly vulnerable to insecure work; and
- direct the Office for Women, the Australian Bureau of Statistics and other relevant government agencies to prepare a Women’s Recovery Plan – a coordinated program of work to identify differential impacts on women and men, track emerging gender inequalities and pursue new opportunities through this crisis to address existing inequalities. All relevant data and research should be made publicly available in real time so that civil society and women’s organisations are able to contribute to the public discussion.

Recommendation 2: systemic measures

- The federal Government must take a lead in supporting the more equal division of paid work and unpaid care between women and men by:
 - legislating for stronger protections from sexual violence in work and strengthening the response by government in relation to its own parliamentary and public service workforces
 - legislating, as recommended in this submission, to reduce the incidence of insecure work and better protect workers
 - developing campaigns to support families more equally share unpaid work
 - providing leadership to create stronger norms and culture of gender equality.
- The federal Government should better focus federal budgets towards ameliorating women’s greater workforce disadvantages.

c) workplace and consumer trends and the associated impact on employment arrangements in sectors of the economy including the ‘gig’ and ‘on-demand’ economy

The prevailing employment framework, along with demand created by consumer trends, are conspiring to create a rapid expansion in the ‘gig economy’. The gig economy is defined largely through the use of digital platforms as intermediaries, connecting workers (or suppliers) with consumers, for time- and scope-limited tasks. More traditional piecemeal work, organised through ‘bricks and mortar’ supply agencies, can however also be considered part of the ‘gig economy’ where work is allocated on a task-basis, with no guarantees of an ongoing employment relationship.

It is agreed largely that the major defining characteristic of gig work is that it is ‘redefin[ing] workers as independent contracts that can be made to assume risks previously handled by the firm’ (Kalleberg, 2018, p 241).

The growing prevalence of the gig economy is covered elsewhere in this submission (see Term of Reference (a)) noting, for example Actuaries Institute (2020, p 4) research suggesting that the gig economy may have grown nine-fold between 2015 and 2019 and may engage up to 250,000 workers.

Gig work reflects the broader workforce and economy by being highly gendered: women dominate in caring and clerical roles, whereas men tend to take gigs in the technology, transport and delivery sectors. According to research by Lyn Craig and Brendan Churchill (2019, p 741) women are more likely than men to choose gig work due to the flexibility it confers, whereas men are more likely than women to find this type of work financially rewarding.

Although there is a lack of data in Australia concerning the gig economy (see Recommendation 1) Craig and Churchill present evidence that warns against assuming that women's (or young people's or the otherwise underemployed) work in the sector comprises 'pin money' and find far more overwhelming evidence that income from gig work is a significant component in sustaining livelihoods.

As an important – and in many cases only (even if multiple jobs are held, they may all be in the gig economy) – source of income, gig work tends to pay poorly. Codagnon et al (2016, p 6), in looking at gig work in the European Union, found that most gig workers are underemployed or self-employed and earn very low to modest wages. Roles dominated by women within the gig economy are likely to pay less than those filled by men, and 'men's earnings, on average, are higher than women's in platform-based work, with differentials comparable to that in the labour market as a whole' (Milkman 2020, p 6). In food delivery services (such as for supermarkets), Milkman et al (2020, p 2) found that the vast majority of 'pickers' were women, and the vast majority of drivers were men, with drivers earning more than pickers. Even within discrete fields, gender pay gaps are evident. Cook et al (2018, p 2), for example, report that within the rideshare sector female drivers earned seven per cent less per hour than male drivers.

On top of poor pay, gig workers tend to take on a range of risks that have historically been borne by the traditional employer or the government. Notwithstanding some degree of tax deductibility, gig workers assume costs associated with purchasing and maintaining infrastructure such as cars, technology and other equipment; as well as insurances to cover material assets and income lost through sickness or injury. Other risks achieve less deductibility such as losses associated with cancellations or payment refusals by clients, along with significant administrative imposts associated with scheduling and the self-management of superannuation, insurances and taxation.

While not all gigs are equal – and some, particularly those in the creative and technological industries can be rewarding and remunerative – the majority of gigs, and particularly those undertaken by women, tend to be low paid, low quality and poorly protected. Evidence suggests that women are driven to gig work as a means of supplementing other poorly paid employment (possibly also in the gig economy), and to balance the competing demands of work and caring responsibilities.

On 22 September 2018, the Victorian Government announced the establishment of an independent Inquiry into the Victorian On-Demand Workforce, with terms of reference including to consider and report on the extent and nature of the on-demand economy, for

the purposes of considering its impact on both the labour market and economy more broadly. The inquiry reported in July 2020, finding that there was a compelling case for change, and making twenty recommendations to help ‘provide genuine choice, fair conduct and certainty for on-demand workers. The recommendations included:

The Inquiry recognised the efficiencies of the Federal Government taking a strong and decisive lead in this area.

Recommendation 3

The Federal Government take a strong and decisive lead in national system reforms to achieve fair conduct and certainty for gig workers, including:

- clarifying and codifying work status to reduce uncertainty about status and the application of entitlements, protections and obligations for workers and businesses;
- aligning work status across workplace laws (including employment, superannuation and workplace health and safety laws);
- establishing a Streamlined Support Agency to provide advice and support to self-employed platform workers;
- establishing a specialised body to assist in resolving disputes about work status;
- promoting fair conduct for platform workers by establishing Fair Conduct and Accountability Standards;
- improving existing unfair contracts remedies for platform workers; and
- introducing enhanced enforcement to ensure compliance with laws.

Recommendation 4

That the express needs and circumstances of female gig workers – particularly in relation to unequal pay and the unequal burden of caring responsibilities – be taken into account when developing national approaches to achieve fair conduct and certainty for gig workers.

d) the aspirations of Australians including income and housing security, and dignity in retirement

The extent of insecure work in the Australian economy has been identified above. To the extent that a worker is under-employed this creates income insecurity, with the worker at risk of being unable to meet their living costs. This is particularly problematic where work patterns are erratic so that workers are not sure what their income will be week by week. Where the worker is the second income earner in the household, as is the case for many women, the household will need to budget on the basis that the second income is not predictable.

Jobseeker and Youth Allowance are available to eligible recipients who report earnings over \$300 pw (from September 2020). Data from January 2021 ([Data.gov.au](https://data.gov.au)) indicate that women were more likely than men to have some earnings, but still required income support: 26.5% of female Youth Allowance (YA) recipients compared to 17% of male YA recipients; and 25.3% of female Jobseeker recipients compared to 14.7% of male Jobseeker recipients. Although the numbers are reducing as the economy recovers from the COVID shock, in January 2021 there were 274,172 recipients of income support who had work but were not earning enough to support themselves without Jobseeker.

The consequences of precarious work and precarious income are that workers cannot commit to long term expenditure, including housing; and their contributions to superannuation are lower, which contributes to a lack of security in retirement. It is worth noting that although the overall number of women on Jobseeker is lower than that for men, the age profile is different: the number of women on income support increases in the over 45 age brackets, while for males the highest numbers of Jobseeker recipients are under the age of 34 ([Data.gov.au](https://data.gov.au), Table 3). The data does not cross-reference age against income earned.

A matter of particular concern for women in this situation is that it may be difficult to secure childcare. Childcare places are generally allocated based on a regular pattern of use, leaving women in precarious employment either paying for care on days when they are not required as they are not working; or unable to accept work as they cannot arrange childcare. For many young women in precarious work, decisions relating to childbearing are driven by their work situation (Chan and Tweedie, 2015).

Housing is a matter of particular concern, as it generally requires a long-term commitment either through a lease or through home ownership. There is longstanding research showing that precarious housing has adverse effects on wellbeing, including economic participation (Hulse and Saugeres, 2008). Baker et al (2020) examined the housing consequences for renters during the COVID pandemic, and found that during COVID the buffers of the Jobseeker supplement and Jobseeker provided some relief for renters, but that the removal of these supports would result in hardship and evictions. Workers who are in less secure employment were more adversely affected during the pandemic (Leishman et al, 2020). It is usual for rental property managers to require proof that an applicant can pay the rent as it comes due, and it can be expected that as the rental market tightens and rent moratoriums are lifted it will become more difficult for people in insecure employment to be able to compete.

For aspiring homeowners, there have been a number of issues that have limited their ability to enter the housing market over the last decade. While interest rates have been reduced to record low rates, the property market has surged in most capital cities in Australia. In order to apply for a loan, first home buyers must save a deposit and then obtain a loan – neither of which is easy when in insecure work.

In particular, APRA is required to establish prudential standards to regulate lending institutions. [APG 223](#) sets out prudential requirements for mortgage lending. Under changes to this guidance in 2017, banks adopted a more rigorous approach to assessing income and

expenses of applicants when assessing whether they could service a loan. This creates a particular hurdle for applicants in insecure work, as it is more difficult to show the ability to service debt in the future.

Although in 2019 there was some easing of the requirements in relation to the interest rate to be applied in determining serviceability, the assessment of income, living expenses and other debts ([APG 223 paras 38 – 46](#)) were not reviewed at that time. Home ownership is still out of reach for many workers in insecure employment.

Current homeowners who fall into precarious employment may also face mortgage stress as a result. Ong et al (2019) examined the levels of mortgage stress among homeowners over the age of 55, and found that more than 20% of homeowners in mortgage stress were underemployed (p 27). This poses additional economic risk in retirement, with superannuation applied to repay the debt, and the homeowner becoming more likely to rely on the age pension.

Ong et al also noted that there is a gender dimension to mortgage stress among older homeowners: older women in mortgage stress were more likely to experience lower mental health and higher psychological distress scores than their male counterparts. They are also affected by career interruptions, which is another manifestation of insecure work; and are more likely to be single following marriage breakdown (Ong et al 2019, pp 4; 105).

The structure of our superannuation system is another cause for concern for workers in insecure work. The system was designed for a labour market where most workers were connected to a particular employer or industry, with the superannuation guarantee managed and enforced through that employment arrangement.

The Retirement Income Review ([Treasury 2020](#), p 235) notes that:

As superannuation is an employment-based scheme, full-time and continuously employed people and those at the higher end of the income distribution make more superannuation contributions and receive more superannuation tax concessions. People with the lowest lifetime incomes generally receive most of the Age Pension payments.

The Retirement Income Review also notes that the two categories of retirees who are most likely to experience income insecurity in retirement are those who do not own a home, and those who leave the workforce early (Treasury 2020, p 137). Both of these risk factors are overrepresented among women in insecure work. The data show a high proportion of women over 45 among the long term unemployed/underemployed; and women tend to leave the paid workforce earlier than men (Treasury 2020, p 257). As already noted, workers in insecure work are more likely to be in housing stress, and this will be reflected in retirement outcomes (Ong et al, 2019; Treasury 2020).

A matter of particular concern for workers in insecure work is the \$450 per month threshold for superannuation guarantee payments. Employers are not required to pay superannuation guarantee payments in respect of these workers, 63% of whom are women (Treasury 2020,

p 7). This exemption is anachronistic and should be removed. The exemption affects primarily low paid and casual employees, and it encourages employers to limit the hours offered to those employees to ensure that they remain below that threshold. This exemption has been in place since the introduction of the superannuation guarantee, and it predates the ability for current payroll technology to process small amounts cost effectively.

This anachronism must be removed in the interests of fairness.

Recommendation 5

The \$450 monthly earnings threshold for the superannuation guarantee should be repealed.

There is also an exemption in s.11 (2) of the Superannuation Guarantee Administration Act for work that is wholly or principally of a domestic or private nature, for less than 30 hours per week. The Explanatory Memorandum uses the example of a part time Nanny or a housekeeper and appears to be intended to remove a business obligation from a householder.

In the context of the care industry, workers may be engaged under the NDIS or Home Aged Care to provide services that are essentially of a private or domestic nature, and these may be engaged directly by the user, without an intermediate agency. NDIS clients have been actively advised to use this exemption when structuring their care requirements, drawing on multiple part time workers instead of one full time worker in order to remove the obligation to pay superannuation guarantee (Macdonald and Charlesworth, p. 16). Although this does make administration easier for the client, and it makes the funding stretch further, this is at the expense of the long-term economic security of the worker.

Whether funded by NDIS or Aged Care packages or engaged as nannies and housekeepers, most of these domestic workers are women, who retire with lower levels of superannuation. Systems are in place to facilitate the payment of small amounts of superannuation by small employers. The exemption is overly generous and open to abuse.

Recommendation 6

The 30-hour exemption in s.11 (2) of the Superannuation Guarantee Administration Act for work that is wholly or principally of a domestic or private nature should be reduced to 10 hours per week.

e) the effectiveness, application and enforcement of existing laws, regulations, the industrial relations system and other relevant policies;

For the first time since records have been kept (Carney and Stanford 2018, p 1), fewer than half of employed Australians are counted as working in a permanent full-time paid job with leave entitlements. As noted in our response to Term of Reference (a), the displacement of secure by insecure work has not been due to a single factor such as growth in casual work.

It is a constructive impermanency based on multiple strategies for enabling employers to maximise numerical flexibility, maintain a constant downward pressure on wages and side-step the responsibilities of the National Employment Standards.

Strategies that operate to displace secure work within the industrial relations system include unnecessary casualisation of ongoing and systematic work; use of flexible provisions to drive irregular hours work without casual loadings and overtime rates; and underemployment often resulting in multiple job-holding.

Strategies that operate to side-step the industrial relations system altogether involve deliberate “fissuring” of parts of the workforce – shedding direct employees and creating intermediaries between workers and the corporation profiting from the work performed. These strategies include:

- outsourcing through labour hire (arm’s length through a second employer)
- short-term contracting
- sham contracting
- gig economy work or work for platforms, and
- supply chain procurement.

All of these measures drive down the income of those who work in a business and drive that business’s competitors into taking similar measures. Given the current high levels of tolerance for structures to circumvent safety net obligations, it is not surprising that insecure employment is at an all-time high and wage growth is at an all-time low.

Insecure work within the industrial relations framework

- **Casual employment**

Industrial awards and agreements commonly define a ‘casual employee’ as ‘one who is engaged and paid as such as such’. The extent of casual employment is measured by the absence of any paid leave entitlement.

It is often argued that the lack of leave entitlements is compensated by the payment of a casual loading. In practice, ABS data indicates that fewer than half of casuals receive a casual loading (Peetz, 9). Nor is the loading adequate compensation, as the Fair Work Commission (FWC) has pointed out:

Although the casual loading for which modern awards provide notionally compensates for the financial benefits of those NES entitlements which are not applicable to casuals, this does not take into account the detriments which the evidence has demonstrated may attach to the absence of such benefits, particularly for adult long-term casuals who are financially dependent on their casual employment. These include attending work while sick, not taking recreational leave because of concerns about whether any absence from work will endanger future employment, the incapacity to properly balance work and attending to personal and caring responsibilities and commitments, changes in working hours without notice, and potential for the sudden loss of what had been regular work without any proper notice or adjustment payment. Additionally there are other detriments associated

with casual employment of this nature, including the lack of a career path, diminished access to training and workplace participation, poorer health and safety outcomes and the inability to obtain loans from financial institutions. ([2017] FWCFB 3541, para 366)

The conventional rationale for casual employment – as the government reiterated in the [Explanatory Memorandum](#) of its Fair Work Amendment (Supporting Australia’s Jobs and Economic Recovery) bill (p ii) – has always been its flexibility, the scope it offers employers to change hours and numbers of employees at short notice as required by the needs of the business. This flexibility is provided by the fact that within the industrial relations framework of awards, agreements and National Employment Standards, most casuals can have their hours changed or be terminated without notice for any reason at the end of a shift.

However, in practice casual employment is not necessarily an employment option chosen by employers for its flexibility. Research conducted at Griffith University has shown that only about 6% of leave deprived workers are being used flexibly, as a ‘narrowly-defined casual’ (Peetz 2020, p 1).⁴ The most recent available ABS data shows that the majority of leave-deprived workers have been with their employer for over a year and expect to be with the same employer a year into the future, and around half of them have stable hours from one week to the next and are not on standby (Peetz 2020, p 1). Fewer than half of all casual employees receive ‘casual loadings’ to compensate for loss of leave entitlements (Peetz 2020, p 7); the rest do not. What is more, low-wage casuals have been found to receive a wage ‘penalty’, given their skills, experience and the like, even though the casual loading should have had the opposite effect for those who received it (Laß and Wooden 2019).

All that remains common to casual employment within the industrial framework is exposure to termination without notice at the end of a shift. The capacity to change hours and shifts without notice and to terminate employment without notice is the ultimate employer-defined flexibility – an omnibus power overlaid on an existing capacity to make employees redundant when the business introduces new technology, slows down due to lower sales or production, closes down, relocates interstate or overseas or restructures or reorganises because a merger or takeover happens.

However, the Full Federal Court recently found that casual employees had some rights outside the industrial relations system under common law, because under common law the terms of the contract set by employers are not wholly determinative, that is, the casualness or otherwise of an employee is determined not only by the terms of an engagement, *but also by post-contractual conduct*.

To some extent the industrial relations system recognised the situation in common law through a model award clause enabling casuals with a post-contractual history of regular

⁴ ‘A ‘narrowly-defined casual’ is a worker who: has been with the employer for less than twelve months, and who do not expect to be with same employer in twelve months time (that is, engaged in short-term work); and did not have the same hours and pay from week to week (that is, engaged in intermittent or variable work), or is on standby; and did not have leave entitlements’ (Peetz, 2020, p.6).

and ongoing employment⁵ to apply to their employers to be formally converted to regular and ongoing employment (*4 yearly review of modern awards – Casual employment and Part-time employment* [\[2017\] FWCFB 3541](#)).

Under the model clause, reasonable grounds for an employer to refuse casual conversion to an employee include:

(i) it would require a significant adjustment to the casual employee's hours of work in order for the employee to be engaged as a full-time or part-time employee in accordance with the provisions of this award – that is, the casual employee is not truly a regular casual...;

(ii) it is known or reasonably foreseeable that the regular casual employee's position will cease to exist within the next 12 months;

(iii) it is known or reasonably foreseeable that the hours of work which the regular casual employee is required to perform will be significantly reduced in the next 12 months; or

(iv) it is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the employee's hours of work are required to be performed in the next 12 months which cannot be accommodated within the days and/or hours during which the employee is available to work. (para 381, (g))

The FWC reached these grounds for refusing conversion in its model clause after considerable consultation. In effect, the grounds recognise that employers will always retain the right to refuse casual employees access to permanent employment it suits their interests to keep them classified as casual.

The model clause included a process for reviewing employer refusals. It is unlikely to get much use in non-unionised, female dominated workplaces. Applicants for conversion are by definition casual and by definition subject to termination at the end of any shift. The likelihood of any casual's applying, or having applied for conversion, and having been refused, then pursuing the unreasonableness of a refusal through the workplace dispute resolution process and on to the FWC is vanishingly small if what they are seeking is increased employment security.

Nor does the model clause-based mechanism compensate an employee for misuse of casual employment; it merely enables employees to ask that the misuse cease.

The issue of compensation was, however, addressed through the courts in the strongly unionised mining sector. In *Skene and Rossato* (*WorkPac Pty Ltd v Skene* [2018] FCAFC 131;

⁵ Defined as 'an employee who has in the preceding period of twelve (12) months worked a pattern of hours on an ongoing basis that reflects that of employee engaged on a full-time or part-time basis (and can continue to work such a pattern without significant adjustment

WorkPac Pty Ltd v Rossato [2020] FCAFC 84) people employed as casual but used on an ongoing and regular basis were found to have a claim to the entitlements of equivalent regular and ongoing employees under the NES. By government calculations, existing potential back pay liabilities for employees flowing from [Skene and Rossato could amount to between \\$18 and \\$39 billion](#). Employers who could be found to have been mis-classifying casual workers became concerned at this potential liability.

The Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2021 included a set of intersecting provisions which would address employer concerns by clawing common law cases back into the industrial system where they are [then defined out of existence](#) (submission 82). These provisions involve:

- A 'definition' of casual employment which is effectively a deeming mechanism. Casual employment is to be defined by the absence of a firm commitment to ongoing work in the employment offer of the employer. Any subsequent misuse of casual employment or common law case is thus displaced by the legislation and defined out of existence;
- A compensation mechanism that offsets casual loadings and ignores other detriments and in any event will not be of any use because the deeming definition is retrospective; and
- A conversion mechanism, including a right to request conversion, that effectively confirms the deeming definition.

NFAW agrees that there has been a need for a definition of casual work, for a mechanism facilitating conversion from casual to permanent employment, and --in lieu of a court-based process for recovery of lost entitlements wholly reliant on usually vulnerable applicants--the development of a development of portable leave schemes for casual employees for those who remain in insecure work, offset by casual loadings. This would only mean increased employer costs to cover long service leave (in some states) for those who are actually meeting their existing obligations to pay casual loadings. We have [argued at length](#) (submission 82) that the amendments finally passed are less than inadequate – they are, like JobMaker, a mechanism for actively supporting and extending casualisation and underemployment to keep wages and award protections minimal.

The introduction of a small claims process to enforce conversion rights is unlikely to offset the impact of employer deeming provisions on vulnerable employees, especially given the exclusion of small business from the conversion (but not the deeming) provisions. We welcome the introduction of a legislated review of the impact of this recently passed provision and the opportunity to amend what has been done.

Recommendation 7

NFAW welcomes the requirement that the recently passed casualisation provisions be reviewed, and recommends that the review consider instead:

- the insertion in the Fair Work Act (FWA) of a new objective definition of casual *employment* in which employment status is determined by post-contractual employment history as well as the nominal employment contract itself;

- *an amendment* to the FWA requiring that casual workers who have been with the same employer for a year and in regular shifts for six months must be offered permanent employment;
- the development of portable leave schemes for casual employees with an offsetting mechanism for casual loadings.

- **irregular hours**

Much has been made by government of the fact casual employment as a percentage of the workforce has not grown significantly since the burst in casualisation from 19.4% to 24.3% of the employee workforce between 1990 and 2010 (Charlesworth and Heron 2012, p 1). However, at the same time that massive increases in casualisation began to taper off, the industrial relations system had widened the scope for using permanent part-time employment as casual work without the necessity of a casual loading, and often without overtime.

The Fair Work Act 2009 introduced a framework of common National Employment Standards and tailored modern awards. The NES provides a maximum hours standards for full time work, but minimum hours -- critical to part-time and casual employees -- were left to be settled on an industry-by-industry basis through modern awards. Each modern award was limited to 10 allowable matters, and on the ground 'there were trade-offs between the parties around the content in each' (Charlesworth and Heron, 2012, pp 13-14).

Modern awards in feminised industries were negotiated against the background of 15 years of enterprise bargaining that had focussed on the award stripping exercise that was AWAs, and enterprise agreements based on trading employer-oriented flexibilities for minimal wage increases. The legacy of bargaining 'meant that those in female-dominated industries came to award modernisation negotiations with far poorer working time arrangements in place and a greater reliance on their award safety net to set the terms and conditions of their employment' (Charlesworth and Heron 2012, 4). The 'modernised' awards that emerged feature 'significant and gendered differences in working time minima for workers in feminised industries.'

Working time minima and predictable working patterns are crucial for women, who form the great majority of casual and part-time workers. Women's work may be 'non-standard' when measured against a traditional male norm, but it is standard for women: women constitute [37.9% of all full-time employees and 67.2%](#) of all part-time employees.

However, it is deliberate myth-making to imply that the numerical flexibilities that benefit employers are the same flexibilities that benefit for women – though the two are often conveniently conflated by employer associations. Steady and substantive minimum hours of work and a reliable working pattern represent basic income security to women and set a floor to the transaction costs of working, such as the expense and time in travelling to work. Most importantly, they assist in the planning of caring arrangements – which is the reason why most women are working 'non-standard' hours to begin with (Charlesworth and Heron 2012, 14-15).

There is little data to be had on the operation of flexible hours provisions following cuts to the ABS and the Australian Workplace Industrial Relations Survey; and the government's triennial report on agreement-making has shrunk from 435 pages in the 1994 Annual Report on Enterprise Bargaining to 55 pages in a triennial report now. However, there is a very useful comparative study of awards framework for flexible hours in the Aged Care and the Social, Community, Home Care and Disability sectors, and manufacturing sector (Charlesworth and Heron, 2012).

The 2012 study goes systematically through the key male and female-dominated awards in 2012, as they emerged from the 'modernisation' process, covering minimum engagements, contracted hours and notice of change, span of hours and shift penalties, overtime penalties and access to casual conversion. We will not take the committee through the details of the respective awards, except to say that women were systematically considered to require less protection and less compensation for irregular working hours than men (pp 16ff).

While there is no systemic data on how awards are operating in practice, there are anecdotal reports from unions about the practice in female-dominated sectors:

Working time insecurity in the form of irregular or fragmented hours is common in industries and sectors such as retail, hospitality, and health services. In these sectors employers have sought to enhance flexibility and reduce costs by: reducing or removing restrictions on working time arrangements; widening the span of ordinary hours; removing or reducing penalty rates for extended or unsociable hours; and reducing minimum periods of engagement. Lack of predictability of scheduling (on a daily and weekly basis) has further eroded job quality. For example both casual and 'permanent' part-time home care workers have highly fragmented working hours. Many of these workers experience multiple short shifts, with long periods of non-pay and no paid breaks. (ACTU 2018, p 2)

It is critical not to allow the word 'flexibility' to confuse employer-defined flexibility with flexibility for workers with family responsibilities. They are very different things.

Women actually need to know when they will be working. They are the family carers. They need to know the minimum they will earn to ensure that the effective marginal tax rate they pay makes financial sense. They are not generally benefitted by 'flexibilities' that average their working hours over weeks or months with unpredictable rosters on a daily or weekly basis. They are not generally benefitted by 'flexibilities' that allow split shifts over a wide span of daily hours or make weekends and weekdays interchangeable. All these costs are borne by casuals; using awards to extend them to part-time workers is just making part-time work casual through the back door.

The Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2021 serviced employer-defined flexibility in part-time as well as casual work. It sought to remove yet more protections from feminised industries and non-standard hours workers, initially in the hospitality and retail sectors. It proposed a mechanism for direct and informal agreements between an employer and a part-time employee which would displace award entitlements and protections and FWC approval mechanisms. Overtime pay was to be removed for these workers in exchange for access to additional hours. The underemployed

were to be compensated by being underpaid. The government foreshadowed extending this ‘flexibility’ to additional awards by regulation.

We note that Parliament has rejected these provisions and that the Government has not ruled out reintroducing them.

NFAW accepts that the lack of minimum hours protections means that many women--- [10.7% in January 2020](#), before COVID impacts-- are underemployed, and that a subset of these women might be in a position to arrange short term care at little or no notice. But the award system has a mechanism – individual flexibility agreements (IFAs)—whereby these women can make themselves available for added hours. The difference between the government’s proposals and the IFA is that the current mechanism specifies that an IFA cannot be imposed on an employee, must be in writing, and cannot be used to reduce or remove an employee’s entitlements. The government’s proposal would have the same changes unwritten, directly with employees, and by definition used to reduce entitlements.

Those overtime arrangements that do not reduce entitlements can be put in place without legislative amendment.

Recommendation 8

Funding should be made available for an urgently needed report on the operation of ‘flexibility’ provisions in awards and agreements before further flexibilities are introduced through ‘modernisation’ and enterprise bargaining.

Recommendation 9

The ‘flexibility’ provisions of the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2021 addressing part-time and casual work should not be reintroduced.

Recommendation 10

‘Job security’ and ‘gender equality’ should be inserted into the objectives and tests of the award review process in the Fair Work Act.

- **multiple job holding**

The skewing of industrial relations arrangements in the service of employer-defined flexibilities is closely tied to the problem of underemployment. Some research suggests that prior to COVID, up to 94% of all underemployment was experienced by part time workers (Kifle et al., 2019), up from 88% in 1985 (Matthew Lloyd-Cape 2020, p 16). Pre-COVID, hours worked per employed Australian fell by more than one hour per month over the past five years, to 139.7 hours per month in 2017 (Carney and Stanford 2018, Table 2).

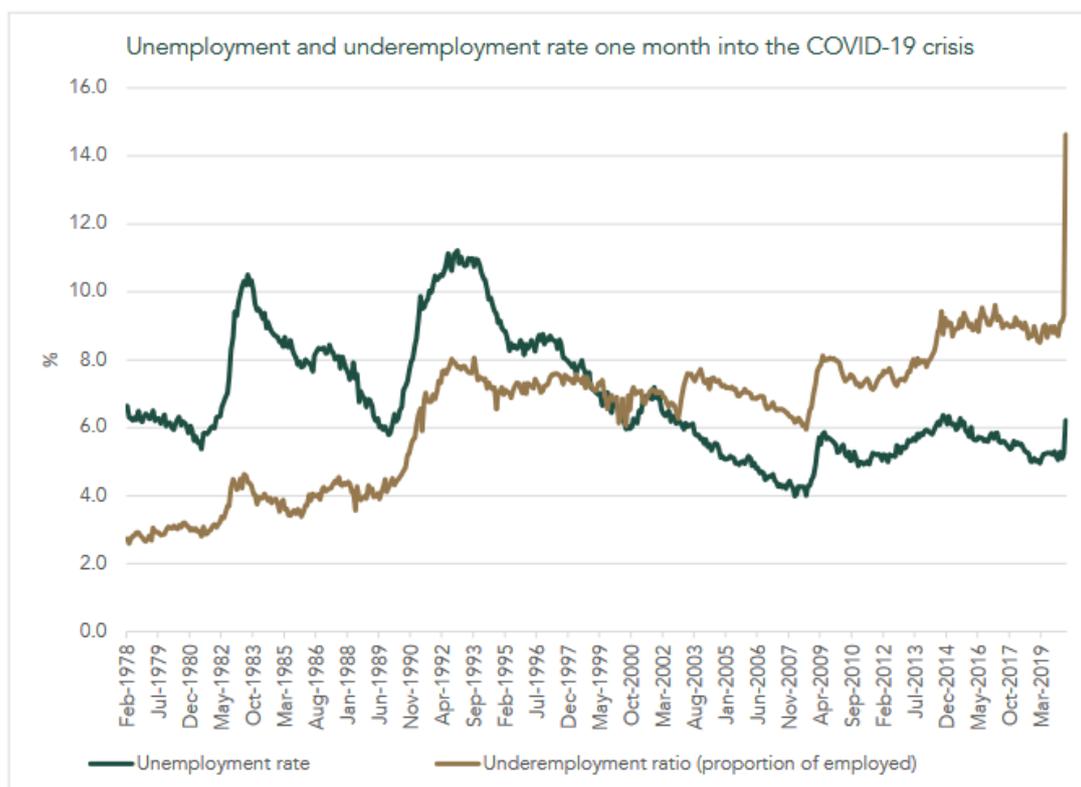
Predictably, industries that have a large proportion of part-time workers also have a higher rate of underemployed workers. These industries also tend to be dominated by women and by younger workers. Underemployment is most commonly experienced in retail, health care

and social assistance, accommodation and food services, and education and training (Lloyd-Cape 2020, 15-19). The 2016 The 2016 Aged Care Workforce Survey similarly found that there had been ‘an increase in the proportion of workers employed for fewer hours’ (Aged Care Royal Commission 2021, Vol 3A, p 427).

Underemployment has no advantages for employees.

It has five advantages for employers. First, it makes rostering easy. Secondly, it allows employers to put in place very low minimum weekly hours for permanent part-time employees, which, thirdly, allows those employers to evade paying superannuation. Fourthly, it increases the working time and earnings insecurity of underemployed workers who are then in a weaker bargaining position for wages and (fifthly) dependant on their managers and employers for additional hours of work.

It is therefore unsurprising to see a correlation between the growth in underemployment and the transfer of power to employers in the industrial relations system following first WorkChoices (2005) and then award modernisation under the Fair Work Act (2009) in the graph below (Lloyd-Cape 2020, Figure 7).



Source: Australian Bureau of Statistics, 6202.0 multiple releases

The inadequate hours of work received by many Australians have resulted in the growth in the number of multiple job holders. According to the ABS there were over 2.1 million multiple job holders in 2016-17, compared with 1.8 million in 2011-12. Women were more likely to be multiple job holders than males. In 2016-17, 53.7% of multiple job holders were female and 46.3% were male. The multiple job holding rate for women (17.5%) was higher than that for men (13.8%).

Current numbers are COVID-affected, but in the longer term underemployment and multiple job-holding are likely to be encouraged by the Design of JobMaker, which the Government was [advised by Treasury](#) could enable employers to replace a full-time employee on \$75,000 with three part-time staff on wages between \$22,500 and \$30,000, while remaining in front financially.

Consistent with the pattern linking part-time/casual work, low wages and underemployment to multiple jobholding, the industries in which secondary jobs are most concentrated are female-dominated: administration and support services, education and training, healthcare and social assistance, accommodation and food services and retail (ABS Cat No 6150.0.55.003 – Labour Account Australia, Quarterly Experimental Estimates, December 2018).

Also consistent with the pattern is the fact that those working multiple jobs are paid less than workers with a single job [according to the ABS](#). This is consistent with qualitative research in the care sector which found that ‘most employees linked their unpaid overtime to job insecurity and some reported responding to pressure to complete additional unpaid tasks at clients’ request because they feared losing shifts if a client requested a different support worker’ (Macdonald et al 2018, p 92). The figures show that the median wage for workers with a single job was \$48,028 in 2015-16 compared to \$39,813 in the same year for those who had to hold multiple jobs to survive. Many of these are the women whose overtime was to be removed under the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) bill in the name of economic growth.

In addition to being paid less, workers with multiple jobs often must contend with increased exposure to COVID (see Term of Reference (b)) and increased travel costs – reported by Macdonald and Charlesworth in 2016 (p 13) and later by the Aged Care Royal Commission (Vol 3A, p 425) -- and in some cases part or all of the travel itself does not even count as work time (MacDonald et al 2018, p 88).

- **The NDIS: a case study in undermining awards**

There has been an increasing emphasis on individual client agency and home-based care provision in the aged and disability care sectors ensuring that those receiving support have greater choice and control to determine not only what service is provided but how, when and by whom. In practice, this means that the person can choose to have the National Disability Insurance Agency (NDIA) manage their funding while they choose their preferred service providers, they can opt to manage their funding and arrange their own supports, or they can appoint a person or organisation to manage their funding and supports (National Disability Insurance Scheme (Plan Management) Rules, 2013).

NFAW is supportive of the principle of increased choice and control for those receiving care. However, we are greatly concerned about the design of the current arrangements and their impact on those delivering care and, as a consequence, those receiving it. However, funding in the sector has been structured to force their arms-length providers beyond efficiency into cost-cutting:

Funding for the personal support provided by DSWs [Disability Support Workers] is determined on the basis of an hourly price, varied in some circumstances. Recent study suggests this fee has been set too low to enable the minimum SCHADS Award conditions to be met for DSWs (Cortis et al., 2017). The study also found that the pricing model did not reflect existing employees' classification levels and provided inadequate allowance for training, workers' time not spent providing face-to-face support (3 minutes an hour), travel between clients (providers can include a 20-minute journey but without any adjustment for support to be provided), and supervision (both levels and workloads). These assessments are supported by findings of an employer survey in which two-thirds of respondents disagreed with the statement 'NDIS prices enable us to meet our industrial obligations' (Cortis and Blaxland, 2017: 3). (Macdonald et al 2018, p 85)

The NDIS blueprint came out of the Productivity Commission's (PC) 18-month long inquiry into Disability Care and Support (2011). The Report's strong message was that the model of self-directed care and the award safety net framework were likely to prove incompatible, and that the latter would have to give way in the interests of 'sustainability'. The PC argued, for example, that:

A casual conversion clause as presently drafted by the FWC could have ramifications for the National Disability Insurance Scheme (NDIS) workforce and scheme sustainability. Much of the scheme's settings rely on a significant increase in casual employees who would work fairly consistent and predictable hours. If these workers took up the option to convert to permanency, then this could reduce the flexibility of employers to respond to demand from scheme participants (and could require adjustment to the assumptions used in the National Disability Insurance Agency's pricing approach). (Productivity Commission 2011, p 327)

The PC noted, however that employers could 'keep the number of hours worked by employees low to avoid the risk of a casual conversion occurring (Productivity Commission 2011, p 327).

NDIS data for 2017 shows that, in percentage terms, the permanent growth rate of the workforce was 1.3% per year; the casual growth rate was 26% per year (National Disability Services 2018, p 14).

At the same time, the pay increases arising from the successful 2012 social and community services equal pay case - which recognised the gendered undervaluation of care work – did not apply to home care workers (Macdonald and Charlesworth, 2016, p 7).

Other strategies used by employers to cut costs involved moving employees to different award classifications. In 2020 the ASU reported a dispute with Community Connections who had classified workers as "home care workers" instead of "community support workers" resulting in an almost \$5 an hour difference for workers (ASU submission 2020, p 5.) More generally, the ASU reported that with the transition to NDIS, more and more community sector services were downgrading the classification of roles despite the descriptors contained within the SCHADS Award. The driver, they argued, was the need to:

... ensure compliance with funding requirements. The NDIS only funds to a level 2.3 of the SCHADS Award whereas previously employees may have been paid at a level 3 or 4 of the Award. There is concern that we will see more downgrading of positions if there is not a review of the funding arrangements.⁶ ... Sleepover Allowance, Weekend Penalties and Travel Allowances are also under pressure. (ASU submission 2020, p 6).

Recently, Anglicare SA made a number of workers redundant in their exceptional needs unit while offering jobs back at a lower rate of pay. Workers were previously paid at level 4 of the SCHADS award but were offered jobs back at level 2 while working with the same exceptional needs clients. The NDIS pricing model needs to be restructured so that prices reflect the correct wages required to pay highly skilled and qualified workers to work with people with exceptional needs... (ASU submission 2020, p 8)

While re-classification and underemployment could be pursued within the existing award framework in the sector, providers identified a number of new award 'flexibilities' required to meet the demand for tailored care by clients on one hand, and low and inflexible funding from the government's competitive tendering process and funding model on the other. Field research among providers in the NDIS pilot stage found that:

Two providers named reductions or abolition of penalty rates for work in unsocial hours, the reduction of minimum engagement and notice periods and the ability to average agreed work hours over longer periods as changes needed. One suggested the 'the award safety net is way too high' (Trial site provider 2). These claims are similar to those made by disability services employers in the Modern Award Review process (Jobs Australia, 2015; NDS, 2015). (Macdonald and Charlesworth 2016, p 15)

Alternatively, individual contracting by clients could circumvent these 'inflexibilities' by pushing provision out of the industrial relations framework altogether. According to the PC, direct contracting by people with disability would circumvent some award minima (2011, Appendix F, p 2) and 'involve no superannuation, tax withholding or OH&S obligations' (2011, p 379). Further, the PC noted, individual contracting would enable those requiring care to draw 'the so-called 'grey' market of family, friends and neighbours into the pool of people who can provide support services to people' minima (2011, Appendix E, p 24). This would have the effect of saving money, keeping down wages and reinforcing the gendered undervaluation of this work.

Corresponding guidance was provided to NDIS participants:

A direct employment guide for people with a disability (My Place, 2013) advised that where a person manages their own funds and directly employs or engages a worker to provide personal or domestic support in their home for 30 or fewer hours a week there is no superannuation guarantee payment made for the worker under an exemption for people employed by a householder 'to do work wholly or principally of a domestic or private nature for not more than 30 hours per week' (ATO Superannuation Guarantee Ruling SGR 2005/1). As suggested in the employment guide, a person with disability can structure their care and support so that it is provided by multiple part-time workers rather than a single worker so that these

exemptions apply (My Place, 2013). (Macdonald and Charlesworth 2016, p 16). [See recommendation under Term of Reference (d) above.]

For its part, the Productivity Commission noted that poor wages and fragmented hours associated with cost-cutting measures might mean that labour supply did not match demand in the sector, but hopefully added that for many carers the psychic reward of the work would compensate for poor wages and conditions, and that in any case immigration might be used to increase supply (2011, Vol 2, ch 15). The PC proposal assumed that immigration policy remain unchanged, that is, that Australia retains a system of strict immigration controls and rules which would enable supply and demand to be evaded and costs suppressed with 'a workforce vulnerable to exploitation':

The majority of this workforce are migrant women who are not protected by employment law due to temporary visa status and who are willing to accept low wages and poor working conditions to earn money to support themselves or family overseas, but risk deportation or other legal immigration issues if they are not compliant (Baines, 2016). (Joseph 2019, p 12)

- **Strengthening awards in the caring sector**

The Aged Care Royal Commission found that, in the aged care sector at least, the combination of psychic reward and immigrant exploitation has not been sufficient to meet the demand for carers. In 2016, almost two-thirds of residential facilities (63%) reported a shortage of workers in at least one direct care occupation. Almost half of home care providers reported skills shortages (49%) (Aged Care Royal Commission Vol 3A, p 374). (At the same time, in annual terms, about one quarter of the disability workforce changed jobs every year (Disability Services Australia 2018, p 18).

The Commissioners took the view that something needed to be done to address poor wages and fragmented hours associated with cost-cutting measures if workforce pressures were to be addressed. It proposed two key measures: bringing a work value case and equal remuneration application to the Fair Work Commission and making wage increases an explicit policy objective of the aged care funding system (Aged Care Royal Commission 2021, Vol 3A, p 414).

So far as awards are concerned, the Royal Commission recommended that those carers who had not benefitted from the Equal Remuneration Order made by Fair Work Australia in 2012 should be included in any application, including both residential care workers working under the Aged Care Award 2010 and home care workers covered by Schedule E of that Award year (Aged Care Royal Commission 2021, Vol 3A, p 417).

Noting that the only Equal Remuneration claim successfully brought to the FWC under the present legislation was a claim endorsed by the government of the day, the Royal Commission *recommended that the principal funder, the Australian Government join in the application year* (Aged Care Royal Commission 2021, Vol 3A, p 416).

The outcome of these considerations was Recommendation 84:

Increases in award wages

Employee organisations entitled to represent the industrial interests of aged care employees covered by the Aged Care Award 2010, the Social, Community, Home Care and Disability Services Industry Award 2010 and the Nurses Award 2010 should collaborate with the Australian Government and employers and apply to vary wage rates in those awards to:

- a) reflect the work value of aged care employees in accordance with section 158 of the Fair Work Act 2009 (Cth), and/or
- b) seek to ensure equal remuneration for men and women workers for work of equal or comparable value in accordance with section 302 of the Fair Work Act 2009 (Cth).

NFAW strongly endorses this recommendation, together with recommendation 85: 'In setting prices for aged care, the Pricing Authority should take into account the need to deliver high quality and safe care, and the need to attract sufficient staff with the appropriate skills to the sector, noting that relative remuneration levels are an important driver of employment choice.'

NFAW also recommends amending the Fair Work Act to insert 'job security' as a principal object of the Act as a whole and the wage-setting, award review and contractor testing processes, and inserting 'gender equality' into the objectives and tests of the award review process.

Recommendation 11

NFAW strongly supports recommendation 84 of the Aged Care Royal Commission calling for a conjoined tripartite application for equal remuneration in the Aged Care Award 2010, the Social, Community, Home Care and Disability Services Industry Award 2010 and the Nurses Award 2010.

Recommendation 12

NFAW strongly supports Recommendation 85 of the Aged Care Royal Commission that 'In setting prices for aged care, the Pricing Authority should take into account the need to deliver high quality and safe care, and the need to attract sufficient staff with the appropriate skills to the sector, noting that relative remuneration levels are an important driver of employment choice.'

Recommendation 13

In order to balance employer-oriented and employee-oriented flexibilities in award-setting, we recommend:

- amending the Fair Work Act to insert ‘job security’ as a principal object of the Act as a whole and the wage-setting, award review and contractor testing processes, and
- inserting ‘gender equality’ into the objectives and tests of the award review process.

Recommendation 14

Recommendation 19 below--calling for labour-hire providers to be required to guarantee the same pay and conditions to the workers it supplies as are being provided to employees of the contracting firm doing the same work – should explicitly be taken to apply to migrant workers.

Shifting work outside the industrial relations framework

We have noted that fewer than half of employed Australians work in a permanent full-time paid job with leave entitlements -- yet employer submissions to the Fair Work Amendment bill and the Government’s own Explanatory Memorandum indicate that both still feel that the Australian workforce is not sufficiently ‘flexible’. There is never any clear endpoint to this drive for flexibility (that is, numerical flexibility of the sort that serves employer interests). Despite the ongoing employer-defined flexibilities introduced through modern awards, despite the flexibilities currently on the government and employer agenda, it will always be cheaper for employers to avoid using an industrial relations system at all, if at all possible.

That is, in fact, is what is occurring. Even with modernised awards and cuts to penalty rates, even with increasingly relaxed enterprise bargaining processes and standards, arms-length employment is blossoming in increasingly inventive forms. As discussed above and in Term of Reference (a), individual contracting has grown; gig economy work has grown; and supply chains are becoming more complex and commonplace. Despite data deficits, there is a consensus in academic, union and government reporting (such as that of the Black Economy Task Force) that sham contracting, labour hire and gig economy work have all grown – the latter “including, in particular, home-based services” (Black Economy Task Force 2017, pp 34, 231, 234). All these measures increase employer-oriented ‘flexibility’ to terminate workers, and incidentally enable them to:

- avoid paying minimum safety net pay and entitlements such as sick, carer’s and annual leave
- avoid employment payroll tax, training costs and meeting regulatory standards such as OH&S
- transfer administrative costs, superannuation, workers’ compensation and travel costs elsewhere, usually directly to employee
- transfer risks to employee (eg any downturn in the economy or industry).

Many of the measures being taken to side-step the responsibilities of being an employer have been considered at length by the Senate Education and Employment References Committee’s report on Corporate avoidance of the Fair Work Act 2009 (2017), the report of

the Black Economy Task Force (2017) and the Migrant Workers Task Force (2019). We do not propose to dwell on these reports at length, except to point out to the Committee that those inquiries were conspicuously light on gender analysis and recommendations. For this reason, we again propose to focus on practices shifting work outside the industrial relations framework in the caring sector.

(a) direct and arms-length contracting

- **Fixed-term contracts**

For some individuals, fixed-term contracting is the employment mode of choice. For others, it is the employment mode of necessity. What is known is that:

Almost two-thirds of self-employed workers are not incorporated, and almost 60 per cent have no employees (meaning their access to time off work or continuing income in case of illness is minimal). And the proportion of self-employed individuals working part-time has grown markedly in recent years, reaching 35 per cent in 2017. Earnings for many self-employed Australians are low and unstable: for example, median earnings for part-time self-employed individuals with no employees were 60 per cent lower than for full-time paid employees. (Carney and Stanford 2018, p 11)

Government is the biggest employer in the industries where fixed term contracts are most prevalent. The majority of these fixed term contracts are heavily concentrated in a few sectors, the three biggest being: education (38%), health care and social assistance (16%), and public administration and safety (13%) (Alexander 2019, p 5). These are also sectors where women workers predominate.

In some cases individual contractors are simply used to add numerical flexibility, as in the case of the Commonwealth's public service where contractors and consultants are used to circumvent the government's own employment caps. These cases have been recently examined in the course of the Senate Legal and Constitutional Affairs References Committee's Inquiry into the Impact of changes to service delivery models on the administration and running of Government programs, where, for example, the Department of Human Services 'acknowledged that one of three main drivers for utilising casual, non-ongoing and labour hire employees is 'the need to operate within the parameters of our budget and Government policies, including the Average Staffing Level (ASL) cap on APS staff' (para 271). We note that in its report the Committee recommended that the Commonwealth public service Average Staffing Level (ASL) cap be lifted immediately (Recommendation 4).

If departments and agencies find it necessary to use temporary contracts to circumvent permanent employment caps on the APS, then the caps themselves need to be replaced by a mechanism which encourages employers to distinguish between temporary and ongoing staffing requirements. Otherwise, caps are just another mechanism to drive workforce insecurity. If departments and agencies find a cap an essential crutch for decision-making, NFAW recommends that government replace its current blunt cap on APS staffing with a cap on back-to-back short-term contracts for the same role.

Recommendation 15

NFAW recommends that government replace its current blunt cap on APS staffing with a cap on back-to-back short-term contracts for the same role.

In other cases government creates systems which drive individual contracting by intermediaries. Governments have progressively outsourced their health care and social assistance responsibilities through grants-based arrangements which effectively force their arms-length providers into managing fixed-term contracts that may or may not be renewed with service delivery grants. NFAW has outlined the impact of this practice on the female-dominated [university sector](#) in its 2020 Gender lens on the Budget.

Where government grants are part of a competitive tender process, they are also used to drive compliance and 'efficiencies' such as contracting which, as is shown below, unashamedly derive from evading safety net standards set by industrial relations, tax and occupational health and safety regulations.

These and similar cases involving the delivery of health care and social assistance are principally of interest to NFAW here, as they have been generally under-regarded by government task forces and are in a female-dominated sector. The Report of the Aged Care Royal Commission, citing the analysis of ABS data for the whole of Australia undertaken for the Inquiry into the Victorian On-Demand Workforce, records that:

between 2014 and 2018, the number of 'independent contractors' in health care and social assistance increased by 29%, from 70,700 in 2014 to 91,700 in 2018, compared with a 19% increase in the overall health care and social assistance workforce during the corresponding period. (Aged Care Royal Commission 2021, Vol 3A, p 428)

Growth in contracting is simply one term in a process of competitive cost reduction that begins with award circumvention and the call for further flexibilities and progresses past the award system altogether into contracting.

Evidence brought to the Commission that 429 stated that, in the increasingly common case of contractors using platforms to find employers, there are also a 'range of direct and indirect costs of doing business [that] are apportioned to workers. 'The apportioning of these costs of the labour process to the worker, in addition to the lack of paid leave, superannuation contributions and 'other protections in Australian employ 4429

While one Commissioner felt that the negative impacts on the contractor and the contractee could be addressed through vigilance by the Quality Regulator, Commissioner Briggs recommended a proactive as well as a reactive approach which in our view is likely to prove more effective:

Recommendation 87: Employment status and related labour standards as enforceable standards

1. By 1 January 2022, the Australian Government should require as an ongoing condition of holding an approval to provide aged care services that
 - a) approved providers: have policies and procedures that preference the direct employment of workers engaged to provide personal care and nursing services on their behalf
 - b) where personal care or nursing work is contracted to another entity, that entity has policies and procedures that preference direct employment of workers for work performed under that contract.
2. From 1 January 2022, quality reviews conducted by the Quality Regulator must include assessing compliance with those policies and procedures and record the extent of use of independent contractors.

Recommendation 16

NFAW endorses recommendation 85 of the Aged Care Royal Commission which calls on providers to preference direct employment of personal care and nursing service workers, as well as quality reviews of compliance with this arrangement. Corresponding measures be taken to address the growth of contracting and gig economy employment in the disability sector.

- **Sham contracting**

There are then obvious advantages to an employer if a contract for service can be represented as a contract of service. The scope for slippage between the contract types from the court perspective has been detailed under Term of Reference (f) below; here we consider the ways in which employees are required to acquiescence in the sham as a condition, not of employment, but of obtaining work.

The Black Economy Task Force was ‘told of ... blatant examples of ABNs being required by employers for people who are employees, such as sales staff in retail shops in shopping centres, Irish backpackers working for traffic management firms, and cleaners forced to incorporate prior to taking on a role’ (Black Economy Task Force 2017, p 233). The report could not provide specific estimates on the size of the sham contracting problem but reported that ‘our consultations suggest it may be growing and numerous examples have been brought to our attention in sectors such as IT, labour hire, courier, beauty and hairdressing, and even executive assistants’ (Black Economy Task Force 2017, p 231).

Again, NFAW is interested in the caring sector, where even trialling the provision of home-based services led, according to one executive manager, to ‘lots of one hour shifts, lots of travel time. We’ve got staff working 15 hours to get 8 hours’ pay, and they’re running their own vehicles. (Trial site provider 4) (Macdonald and Charlesworth 2016, p 13).

Caring services are ripe for sham contracting: the nature of the work, the view of the work taken by agencies like the PC, and the focus of the government’s funding machinery on cutting industry costs all drive providers along the spectrum from minimising award

protections to evading the industrial relations framework through contracting and sham contracting. According to the Black Economy Task Force:

National Disability Services (NDS), the peak organisation for non-government disability services, has expressed concern about the potential for sham contracting under the NDIS, stating that it: ‘could be a new and growing problem in our industry as the NDIS creates a more competitive market for disability services. Our concern is that greater choice and control for people with disability should not entail increased legal risk for them, and/or unfair wages and working conditions for their workers’.
(238)

In its 2019 submission to the Inquiry into the Victorian On-demand Workforce, VCOSS members identified similar concerns among its members regarding sham contracting arrangements, and particularly the position in which employees driven into sham contracts find themselves.

While the Fair Work Act 2009 prohibits “sham arrangements” to avoid the responsibilities of employment, workers seeking clarity around whether they are eligible for basic entitlements and protections must challenge their employment arrangements before a court or a tribunal. [VCOSS argued that](#) ‘placing the onus on vulnerable workers to initiate a claim in the Commission puts a disproportionate burden on employees, particularly when employers have greater resources to defend a claim’ and recommended that ‘greater legislative clarity around employment status and access to entitlements can reduce this burden.’

The [Australian Services Union has argued](#) further that not only are employees put into an invidious position, but that the provisions of the FWA under which their case would be heard are also deficient. The Act provides that:

S 357 Misrepresenting employment as independent contracting arrangement

- (1) A person (the employer) that employs, or proposes to employ, an individual must not represent to the individual that the contract of employment under which the individual is, or would be, employed by the employer is a contract for services under which the individual performs, or would perform, work as an independent contractor.
- (2) Subsection (1) does not apply if the employer proves that, when the representation was made, the employer:
 - (a) did not know; and
 - (b) was not reckless as to whether;the contract was a contract of employment rather than a contract for services.

The Productivity Commission and the Commonwealth Government’s Black Economy Taskforce both recommended amendment to the current provision to reduce the degree of intention that must be proven. [The Commonwealth Government agreed in principle](#) to increase the penalties for breaches of the sham contracting provisions in the FW Act, but as

with the other parts of the wage theft proposals in the 2020 Fair Work package, stopped short of agreeing to lower the intent threshold for establishing the offence.

Recommendation 17

The Fair Work Act should be amended to lower the intent threshold in relation to misrepresenting employment as an independent contracting arrangement.

Recommendation 18

Victims of sham contracting should have access to the same court and tribunal proceedings as those proposed for victims of wage theft more generally, simplified along the lines recommended by NFAW in its [submission to the Fair Work Amendment \(Supporting Australia's Jobs and Economic Recovery\) Bill 2020](#) (submission 82, recommendation 14).

- **Labour hire**

The final report of the Black Economy Task Force the labour hire and broader recruitment services industry as a valuable source of flexible, short-term employees for businesses. At the same time it found that

Parts of the labour hire industry ... are infiltrated by unscrupulous firms and individuals that are operating in the black economy. Some sectors are particularly vulnerable to such operators, including horticulture, security and **perhaps even aged care** [our emphasis]. This can range from simple non-compliance with PAYG tax withholding and payment of cash wages well below award rates, to exploitation of vulnerable workers and even labour hire firms with links to crime, money laundering, immigration fraud and other abuses. (247-8)

As employers, labour hire firms can pay less than the employer using their services, and while they cannot pay less than the relevant award or the NES they can reduce costs through underemployment, casualisation and reclassification. They can avoid safety net minima altogether if they use contractors, genuine or sham. The same applies to gig platforms examined under Term of Reference (c) above.

The RC examined this issue at some length (Vol 3A, Ch 12.7) in relation to modes of employment, including contracting both by providers and through gig platforms.

Following commitments to introduce or the actual introduction of labour-hire firm licensing schemes at state and territory level, the government has announced its intention of introducing its own scheme and, [proposed the following list of “guiding principles”](#):

- Mandatory registration of labour hire operators with the Fair Work Ombudsman under annual subscriptions and requiring disclosure of prescribed information about their owners/operators and the business;
- Coverage of high risk sectors at a minimum, including horticulture, cleaning, meat processing and security (subject to stakeholder consultation);
- Compliance to be monitored by the Fair Work Ombudsman;
- Publication of a directory of registered labour hire operators; and
- Imposition of fines for the use of unregistered labour hire operators.

Without knowing what information is to be prescribed for disclosure it is not possible to assess the effectiveness of the proposed Commonwealth regime. The possibility that the scheme will be confined to selected sectors also restricts the scope for assessment, but in our view it ought at least to take in home-based care in both the disability and aged care sectors.

In any event a licensing regime will only deter conduct that is actually unlawful; it will not of itself deter the use of labour hire as a mechanism to keep costs down through underemployment, casualisation, reclassification or the use of arms-length employment to avoid paying minimum safety net entitlements, superannuation, workers' compensation, travel costs or meeting OH&S responsibilities.

The proposal that firms using labour-hire be required to guarantee the same pay and conditions for the same job will go some way to prevent employers from outsourcing their labour requirements to labour hire companies or contractors in order to cut the wages of employees and side-step the enterprise agreements for the pay and conditions of those employees, and NFAW is supportive of such a measure. But such a measure would not address the case where a firm using labour hire has no equivalent in-house employees; and in any case it would need to be supplemented by the recommendations relating to award and non-award strategies for pushing down wages set out under this Term of Reference.

Recommendation 19

Labour-hire providers should be required to guarantee the same pay and conditions to the workers it supplies as are being provided to employees of the contracting firm doing the same work.

Recommendation 20

The labour-hire firm licensing scheme to be implemented at the Commonwealth level should at a minimum identify home-based care in both the disability and aged care sectors among the high-risk sectors to be covered by the scheme.

- **Concluding remarks on Term of Reference (e)**

Home-based care in Australia has been marketised under the rubric of client choice and control, but marketisation has also meant that both the care and the control have had to be

exercised in a competition to reduce wages, entitlement, and employment costs generally. This is the intention of the model, and it relies on ripping off carers, their clients, and many of the provider groups and individual carers who are wedged into progressively cutting their costs and compromising their employment practices on behalf of government.

The recommendations in this section target different points across the broad cost-cutting strategy for care delivery, but as has been pointed out, ‘the fact that the government is effectively the top of the supply chain body in publicly funded social care systems such as the NDIS and aged care highlights the need for embedding accountability for labour standards in public policy more generally (Macdonald et al 2018, 94). These measures include:

- making changes to regulatory oversight of government-funded caring activities in the aged care and disability care sectors to address intersecting interests of quality of care and quality of employment, as laid out in Vol 3A of the report of the Aged Care Royal Commission
- increasing funding in the caring sector as proposed in Recommendation 84 of the Aged Care Royal Commission and more broadly in [the NFAW 2021 Pre-budget submission](#)
- amendments to the Fair Work Act proposed in Recommendation 13 above to balance employer-oriented and employee-oriented flexibilities in award-setting, and
- inserting ‘gender equality’ into the objectives and tests of the award review process.

Government procurement guidelines and practices are addressed under Term of Reference (g).

Recommendation 21

NFAW recommends that, in addition to the broader set of recommendations made in relation to procurement under Term of Reference (g) below, government should recognise its responsibilities as the top of the supply chain body in publicly funded social care systems by:

- making changes to regulatory oversight of government-funded caring activities in the aged care and disability care sectors to address intersecting interests of quality of care and quality of employment laid out in Vol 3A of the report of the Aged Care Royal Commission, and
- increasing funding in the caring sector as proposed in Recommendation 84 of the Aged Care Royal Commission and more broadly in [the NFAW 2021 Pre-budget submission](#).

f) accident compensation schemes, payroll, federal and state and territory taxes;

Employers are required to contribute to a range of statutory schemes based on the number of employees that they have. Workers or accident compensation schemes and payroll taxes are payable at the state or territory level, while federal taxes include the liability for Pay As You Go withholding tax, superannuation and Fringe Benefits Tax. There are also protections under the *Fair Work Act* for employees.

Casual and part-time employment is within the terms of the relevant legislative schemes. Where the tax is based on the aggregate wages bill, such as payroll tax, it will include all employees, although in respect of individuals there may be thresholds that are not met, for example the \$450 pm threshold for superannuation guarantee contributions.

The challenge in respect of taxation and other regulatory regimes that are based on employment is that coverage is not generally extended to workers who are not classified as employees: contractors and workers in the gig economy. Such arrangements are often referred to as sham contracting.

The engagement of workers under contracts for service, instead of as employees (contracts of service) has the potential to significantly reduce taxes payable by the employer. The employer will save in two ways: they are not liable for those taxes that are borne directly by the employer; and where an amount is withheld on behalf of a worker they gain a cash flow and management advantage as they do not have to comply with withholding arrangements.

One of the problems with categorising a worker as a contractor instead of an employee is that obligations that are imposed on an employer can be circumvented, leaving the employee unprotected: for example they may not be covered by Workers Compensation insurance or the superannuation guarantee. In a perfect market, the rate paid to such workers would be sufficient to ensure that they are able to purchase the appropriate type of cover personally; however in most cases of sham contracting the worker does not receive enough remuneration to reflect the benefits that are lost by not being an employee.

We note that the NSW Parliament is currently undertaking an [enquiry into the impact of technological and other change on the future of work and workers in New South Wales](#), which is due to report in late 2021. Evidence presented to the select committee highlights the concern over working conditions for workers engaged in the gig economy. In particular, the [submission from the Australian Women's Working Futures Research Project](#) highlights concerns over the effect on women of the removal of certain working conditions, including parental leave; conditions that apply to sham contractors as well as gig economy workers.

At law there are a series of tests adopted by the Courts to determine whether a person is engaged under a contract of service (employee) or a contract for service (contractor).

The most significant is the control test, which determines whether the worker has control over how they conduct their own business, or whether the payer sets the procedures and protocols that must be followed.

The other questions to be considered include:

- whether the service is integrated in the payer’s business model;
- is the contract to achieve a result, without the method being specified;
- can the work be delegated; who bears the risk if the work is not satisfactorily completed; and
- does the worker need to provide all tools necessary to complete the task ([ATO TR 2005/16](#)).

In 2011 the Federal Court was required to determine whether workers were employees for superannuation guarantee purposes in *On Call Interpreters And Translators Agency Pty Ltd v FC of T* ([No 3](#)) [[2011](#)] [FCA 366](#). The Court summarised the question as follows:

208 Simply expressed, the question of whether a person is an independent contractor in relation to the performance of particular work, may be posed and answered as follows:

Viewed as a “practical matter”:

- (i) is the person performing the work as an entrepreneur who owns and operates a business; and,
- (ii) in performing the work, is that person working in and for that person’s business as a representative of that business and not of the business receiving the work?

If the answer to that question is yes, in the performance of that particular work, the person is likely to be an independent contractor. If no, then the person is likely to be an employee. (at para 208)

The Court then went on to discuss these questions and the consequences at length in paragraphs 209 to 220.

The difficulty for regulators is that each contract or arrangement must be considered on a case-by-case basis. For example, in the Vabu cases the Courts considered whether a bicycle courier was an employee on two separate occasions. In 1996 they were held not to be employees for superannuation guarantee purposes (*Vabu Pty Limited v Federal Commissioner of Taxation* (1996) 95 ATC 4898), but subsequently the High Court held that they could be employees for the purposes of public liability (*Hollis v Vabu* (2001) 207 CLR 21); although this finding may not have extended to contractors using other delivery modes such as delivery vans.

Notably, following the public debate and the recent series of fatalities to home delivery drivers Uber Eats has reportedly changed its contract terms to state that riders are not employees, including adopting some of the criteria used in determining whether a worker is an employee ([The Guardian, 29 Jan 2021](#)).

One technique that has been adopted to address this has been to provide that the law also applies to persons engaged under a contract that is primarily for their services: for example, s. 12(3) of the Superannuation Guarantee (Administration) Act provides that:

If a person works under a contract that is wholly or principally for the labour of the person, the person is an employee of the other party to the contract; and the definition of salary or wages in s.11 includes payments under a contract referred to in subsection 12(3) that are made in respect of the labour of the person working under the contract...

However a contract can be written using terms that are not caught by this extension, for example by requiring that the worker provides their own means of transport: arguably the contract then also covers provision of the vehicle.

There is a common perception that requiring a person to obtain an ABN is sufficient to confer them the status of an independent contractor. This is not the case, as the ABN application asks a series of questions to determine whether the applicant is in fact operating a business and entitled to an ABN.

In 2016 the Inspector General of Taxation published a report on the administration of Employer obligations by the ATO ([Inspector General of Taxation, 2016: Ch 2](#)). The key tool used by the ATO is the Employer/Contractor Decision Tool ([ATO QC19387](#)) that works through the various factual and legal points that need to be considered when making a decision.

An area of particular concern for NFAW is the increasing use of contracts for service among care providers, who are disproportionately women. This form of contract leaves these women without the protection of workers compensation and the *Fair Work Act* and could have further legal consequences in the event of a client taking legal action in respect of their care, depending on the basis of the claim and the terms of the contracts between all three parties.

The Federal Government had the opportunity to address these issues in 2006 when the *Independent Contractor Act 2006* was passed. The focus of that Act, which predates the rise of the gig economy, was to protect genuine contractors by removing them from the scope of state workplace relations laws and setting up a contract review mechanism. The consequence has been to make it more difficult for regulators to protect the rights of workers where the services being provided are to all intents and purposes the same as those provided by employees, but the contract is drafted using terms that classify them as contractors.

g) the interaction of government agencies and procurement policies with insecure work and the 'on-demand' economy

Governments spend billions on goods and services including from external suppliers. In 2018-19, the Australian government spent \$64.5 billion procuring goods and services across almost 80,000 contracts (Department of Finance 2020, "Statistics of Australian Government Procurement Contracts" derived from AUSTRAC Tender, 12 August 2020). This does not include funding between the Commonwealth and State/Territory governments, local governments and other organisations in receipt of Commonwealth funds.

Currently Commonwealth Procurement Rules (CPRs) mandate purchasing requirements. The principal requirement is value for money but also includes the following social procurement principles:

- the Workplace Gender Equity Payment Principles
- the Australian Industry Participation Plan for Government Procurement to support local industry, and
- the Indigenous Procurement Policy to support Indigenous businesses.

Procurement used to address employment equity issues has a long history. The UN, ILO, EU and the OECD all recognise the importance of strategic public procurement. In addition, the Australian government is party to a number of such international agreements, for example, the Australian, New Zealand Government Procurement Agreement, the objective of which is to create and maintain a single ANZ government procurement market in order to maximise opportunities for competitive ANZ suppliers and reduce costs of doing business for both government and industry.

As this submission has demonstrated, women are over-represented in casual, part-time and insecure “on demand” employment. As the submission also demonstrates, these categories present major challenges for the way work is regulated.

NFAW strongly supports the requirement that organisations need to demonstrate compliance with the Workplace Gender Equity Act 2012. However, we suggest the CPR’s need to go further in order to maximise employment opportunities in jobs that are sustainable. While suppliers have to comply with the Fair Work Act, existing regulations do not directly address employment conditions facing many women and many workers are not covered by the Fair Work Act.

Currently there is no single consistent definition of the term ‘employee’ used across the public sector in workplace relations and procurement. Contracts of employment or independent contractors are generally not explicitly covered. There also appears to be no requirement for public sector agencies to report all details of contracts with a high labour content, including for the purposes of identifying and remedying sham contracting arrangements (particularly where ‘employees’ have unknowingly entered into independent contracting arrangements).

In addition, Australia has to comply with obligations under Free Trade Agreements (FTAs). FTAs can result in barriers to implementing social procurement principles. Generally, FTAs do not address employment equity issues. This leaves potential Australian suppliers in competition with foreign suppliers with relatively poor employment practices.

Addressing these issues presents a complex set of challenges. As our submission has highlighted, the COVID-19 pandemic resulted in further deterioration of employment outcomes for women. Now is the time to implement structural change to procurement and related policies to help rebuild the economy.

The ACT government has developed a set of arrangements that appear to address some of these issues. The ACT government now requires contractors to meet workplace standards contained in the Secure Local Jobs (SLJ) code and have a SLJ plan and certificate. The plan includes information on employment security health and well-being, diversity and career development for workers.

Suppliers are ineligible to tender for Territory-funded works unless they:

- hold a Secure Local Jobs Code Certificate issued by the Registrar, confirming that the contractor complies with the Secure Local Jobs Code; and
- for procurements of \$25,000 or more, provide a Labour Relations, Training and Workplace Equity Plan (LRTWE Plan) (principal contractors only).

Upon the award of a tender, contractors are required to contract on the basis of ‘model contract terms’ which bind the contractor to comply with the Secure Local Jobs Code and any LRTWE Plan (among other matters). More specifically, the LRTWE Plan must detail how the contractor will (among other matters):

- minimise ‘insecure work arrangements’ (including short-term and casual employment);
- support the physical and mental health of its employees, including with any health and well-being activities;
- promote and support diversity in the contractor’s workforce; and
- if there is an existing contractor in relation to a procurement, support the transfer of employees from the existing contractor to the tendering contractor.

Social procurement has strong potential to address insecure and “on-demand” work alongside other interventions. The ACT code is a good start but could be strengthened by greater emphasis on gender equity by, for example, including family violence leave.

To be most effective suppliers need to provide employment data as well as to provide evidence of compliance. Where breaches occur remedies should be applied such as financial penalties, exclusion from tendering, cancellation or warnings. Mechanisms should be used to regularly monitor effective implementation.

Recommendation 22

NFAW recommends that:

- the Department of Finance develop a consistent definition of employee;
- discussions be held with existing Free Trade Agreement partners to include a broader employment equity exemption and ensure that future agreements include broader employment equity exemptions;
- government require that a detailed analysis of employment in contracts with a high labour content be published annually; and
- the Department of Finance develop clear compliance requirements relating to social procurement and an evaluation framework.

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Appendix A: Simulations of increased government expenditure in the care sectors

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Key statistics and findings

1. More than 900 thousand Australians who have unpaid caring responsibilities for young children, the elderly, or people with disabilities would like to work more hours in paid employment. If this could be facilitated by greater provision of government-funded care services, labour supply would increase by over 2 per cent.
2. More than 70 per cent of this additional labour input would be supplied by women, alleviating some of the disadvantage experienced by women in the labour market.
3. Supporting carers with additional government-funded service delivery and higher wage growth in the child care, aged care and disabled care sectors underpins additional economic growth such that GDP in 2030 would be 1.64 per cent higher than it otherwise would have been. This is equivalent to an average of \$1266 per person per year in 2018-19 prices, or more than \$30 billion per year in aggregate.
4. Additional employment and higher wages in the care sector also directly supports women's employment and incomes, as these sectors account for a high proportion of women's employment.
5. This economic growth dividend underpins increased revenue from taxes on income and consumption, offsetting much of the cost to government of increased service delivery (including higher wages) in the care sector. In 2030, we estimate the cost of the additional service delivery to be \$19 billion, yet the additional impact on the government deficit is less than \$3 billion.

1 Introduction and background

This note describes two simulations of the Australian economy over the next decade in which government expenditure in the care sectors is increased significantly.

2 Methodology and model inputs

2.1 Methodology

The simulations are run using VUEF-G, a variant of the Victoria University Employment Forecasting (VUEF) model, a Computable General Equilibrium model of the Australian economy with a detailed representation of the labour market and gender. The model is described in the Appendix.

A key feature of VUEF-G is the modelling of time use by cohort. Cohorts are defined by highest level and field of educational attainment and gender (e.g. “Certificate III-IV, Society and Culture, Female”). Time use for each cohort is divided into paid employment, leisure, and unpaid employment (such as caring for children or elderly relatives or maintaining a household). Cohorts allocate time according to preferences (as revealed in existing time use data derived from the Census), and change their allocation through time according to changes in wages and the cost (or availability) of care services that can replace unpaid employment. By this mechanism, an increase in wages provides an incentive to forgo some leisure time and supply more labour. Similarly, an increase in the user cost of care services creates an incentive for people to forgo paid employment and provide care services themselves, for example, a parent may forgo an additional day per week of paid employment if child care costs increase.

For cohorts with significant time allocated to unpaid employment, the scope to increase employment by greater provision of government-funded care services is large. Across all levels of educational attainment, women allocate more time than men to unpaid employment, and both men and women with lower levels of educational attainment allocate more time to unpaid employment. The time-use theory in VUEF-G uses this information to estimate the labour supply response to provision of additional care services for every cohort. The aggregate impacts for men and women are calibrated to the shocks described in Section 2.2.2.

Model results are generally expressed as percentage deviations from a business-as-usual base case. The base case does not take into account the Covid-19 pandemic.

2.2 Model inputs

2.2.1 Expenditure

The key economic shocks are increases in expenditure on the care sectors.

In VUEF, the care sectors are Child Care, Residential Aged Care, Residential Disabled Care and Other Social Assistance (Disabled). Shocks to the quantity of output for each sector are introduced over four years (2021-22 to 2024-25) as set out in Table 1. Over the same time interval, wage increases are applied to two occupations, Child Carers and Personal Carers and Assistants, as set out in Table 1.

To facilitate the rapid increase in output in the care sector, shocks are applied to investment from 2020-21, one year in advance of the shocks to output. This ensures that sufficient capital stocks are in place to support the expansion.

Table 1: Expenditure shocks applied by industry and occupation (%)

	Total increase (over 4 years)	Annual increase
<u>Service delivery by industry</u>		
Child Care	35.0	7.79
Residential Aged Care	8.3	2.02
Residential Disabled Care	8.3	2.02
Other Social Assistance (Disabled)	8.3	2.02
<u>Wage increase by occupation</u>		
Child Carers	21.6	5.0
Personal Carers and Assistants	21.6	5.0

The expansion in output and increase in wage costs are absorbed by an increase in government expenditure. Higher wage costs increase the price of care, which has a negative impact on household (private) consumption of care services. Therefore the expansion in government expenditure covers not only the net expansion of the care sectors, but also replaces some private expenditure.

2.2.2 Labour supply

The increase in the care economy is assumed to be government-funded and large enough to remove all impediments to labour market participation experienced by carers in the informal sector. This drives a significant increase in labour supply. The calculation of the shock to labour supply involves determining the number of people for which caring responsibilities act as a barrier to labour force participation, determining a suitable increase in average hours worked if formal care was made available, and converting this into a percentage increase in labour supply.

Shocks to labour supply are calculated using data from the ABS (ABS Cat. No. 6239.0, 2020), in which 923,000 people with caring responsibilities reported that they wanted to work more hours (Table 2). Approximately two-thirds of these are women, and approximately half cared for children under the age of 5.

Informal primary carers for aged and disabled people provide an average of 35.2 hours of care per week (152 hours per month), while non-primary carers provide an average of 10 hours per week (43 hours per month) (Deloitte, 2020). We assume that the increase in supply of formal care relieves primary and non-primary carers of some of their responsibilities and enables them to enter the labour force or increase their hours of formal work. We assume that primary carers increase formal employment by an average of 100 hours per month, and informal carers by 10 hours per month. Around one-third of aged and disabled carers are classified as primary carers (Deloitte, 2020).

We assume that people who care for children could increase their employment by 40 hours per month if sufficient child care was available.

Based on these assumptions, an additional 37 million hours of labour would be supplied per month, of which 27 million would be supplied by women. This is equivalent to an increase in overall labour supply of 2.06 per cent. Labour supply increases for both men and women: Men's labour supply increases by 0.93 per cent and women's by 3.74 per cent.

The increases in labour supply are treated as shocks to the VUEF-G model, and introduced over four years (2021-22 to 2024-25) alongside the increases in expenditure on the care sectors.

Table 2: Labour supply impacts

	Male	Female	Persons
<u>People who want to work more hours ('000 persons)</u>			
Cared for someone with a long-term illness or disability	106	152	258
Cared for an elderly person	78	142	219
Youngest child aged under 5	108	337	446
Total	292	631	923
<u>Additional hours supplied per person per month if sufficient care available (assumed)</u>			
Aged/disabled primary carer	100	100	100
Aged/disabled non-primary carer	10	10	10
Child carer	40	40	40
Percentage of aged/disabled carers who are primary carers	21	41	32
<u>Economy-wide aggregates</u>			
Total additional hours supplied per month (million)	10	27	37
Average monthly hours worked, 2018-19 (million)	1044	726	1770
Percentage increase	0.93	3.74	2.06

2.2.3 Other macro settings

The shocks as described are run in two macroeconomic environments. In both cases, standard CGE macroeconomic settings apply: household consumption is a fixed proportion of household income, government consumption expenditure (other than on the caring sectors) is fixed to the baseline, and real wages adjust slowly to return the unemployment rate to the baseline.

In **Scenario 1**, the increase in government expenditure on the caring sectors is deficit-financed, with no explicit policy measures taken to recover the deficit.

In **Scenario 2**, the increase in government expenditure on the caring sectors is offset by a reduction in government-funded investment in infrastructure.

2.2.4 Limitations

The modelling provides insights into the macroeconomy and the household sector as a whole, but does not differentiate between individuals or households by income. The key finding that greater availability of government-funded care services will have a positive impact on labour supply, is of a general nature, and we make no recommendations about the distribution of these services. The existing childcare subsidy scheme is particularly complex and creates strong disincentives to work for individuals (usually mothers) in some families. Recommendations on how to simplify this system and

remove these disincentives (see for example KPMG, 2020) are not able to be derived from the CGE model.

3 Results and Discussion

3.1 Scenario 1

The increase in labour supply facilitated by additional supply of caring services is absorbed gradually by the market. By 2026, labour supply is 2.24% above the base case, and employment is 1.85% above base case, with female employment accounting for the majority of the increase (Figure 1). After 2026, labour supply stops increasing and employment gradually catches up (unemployment returns to base case level).

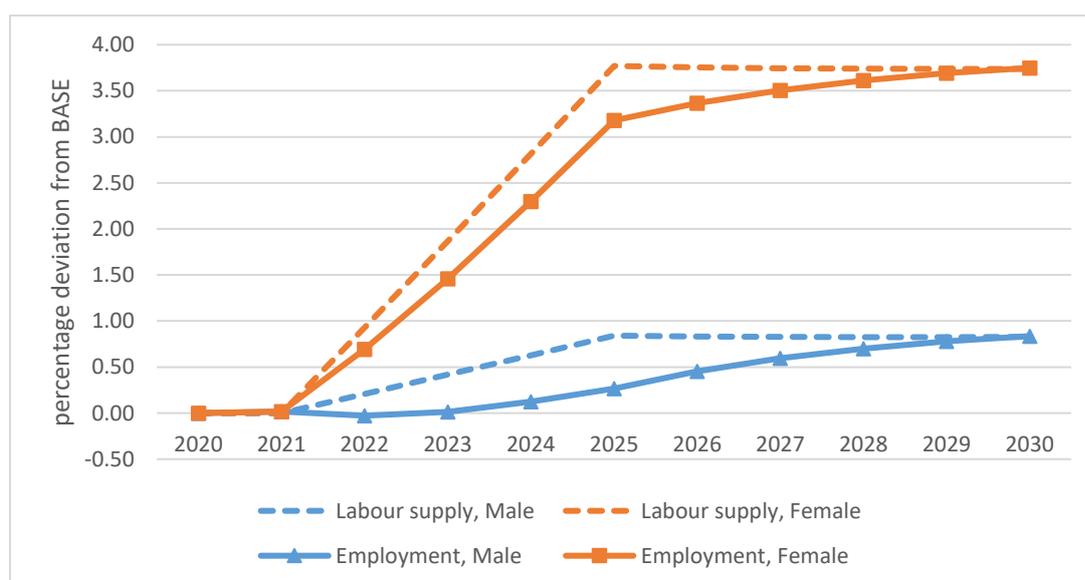


Figure 1: Employment and labour supply impacts, Scenario 1

The increase in labour supply causes slower overall wage growth (notwithstanding specific increases imposed on some occupations) but the net impact on labour income (higher employment and lower wages) is positive. There is a very slight slowing of income growth for males, and a strong increase in income growth for females (Figure 2).

Beneficiaries under the scenario include people who are relieved of some caring responsibilities and can work more hours, thus earning more income, and business owners, who can access a greater pool of labour. On the other hand, people who were already employed will experience slower wage

growth than they otherwise would have. Overall stronger income growth underpins higher tax collections on income and consumption.

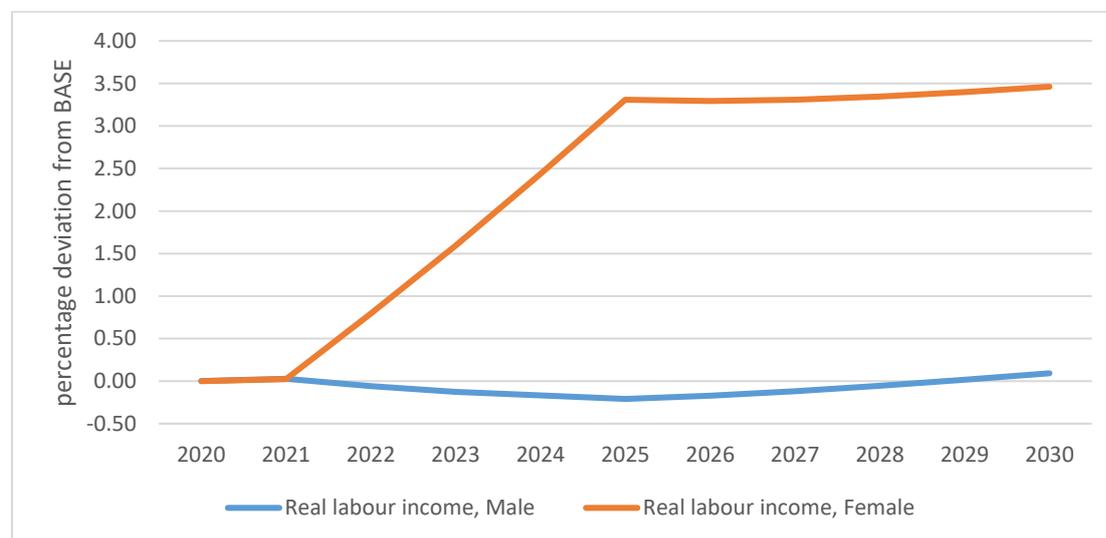


Figure 2: Impact on real labour income, Scenario 1

The increase in employment strengthens GDP growth, which remains at around 1.25 per cent above the base case from 2025 (Figure 3). Public expenditure, which includes the large additional expenditure on the care sector, grows more quickly than GDP, thus increasing its overall share of GDP. This is offset by slower export growth. Growth in household spending and investment follow a similar trajectory to GDP. Household spending is supported by stronger income growth, while investment is stimulated by the need to create more capital stocks to support the expansion in the caring sector and more widely as a response to the larger labour supply.

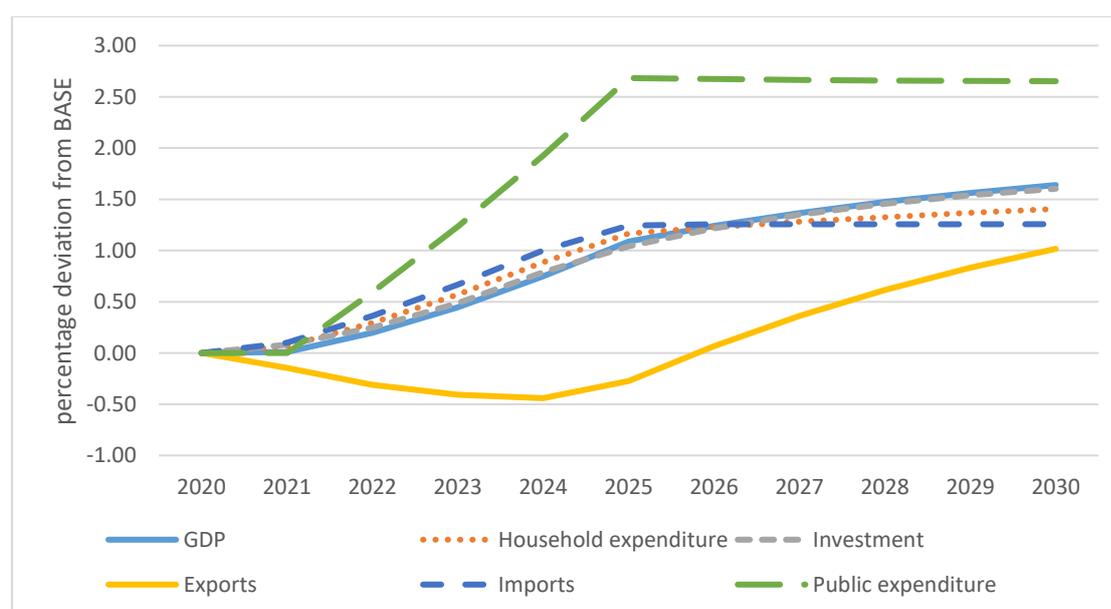


Figure 3: GDP and macroeconomic expenditure impacts, Scenario 1

All industries expand relative to the base case by 2030, but at differing rates (Figure 4). The expansion in Health care and social assistance is well above average, as this sector includes child care and aged and disabled care. Expansion in most other sectors is in the range of 1.5 to 1.75 per cent by 2030, with some exceptions. With strong domestic expenditure, the domestic currency strengthens, which makes trade-exposed industries (those that export or compete with imports, i.e. agriculture, mining, manufacturing, tourism and education) less competitive. Mining expands very little, being trade-exposed and capital-intensive (poorly positioned to take advantage of additional labour supply). Public Administration and Defence expands very little, as policy settings in respect of government expenditure on these activities are assumed not to deviate from the base case.

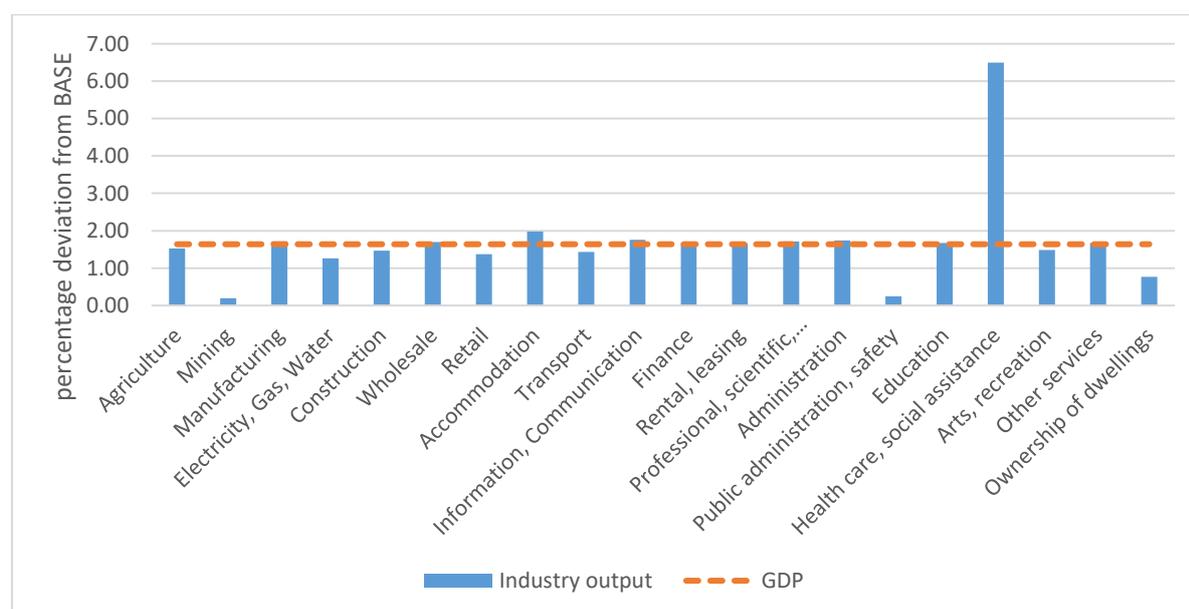


Figure 4: Impact on industry output, 2030, Scenario 1

The additional spending on care services leads to higher budget deficits over the ten-year forecast period (Figure 5). Over 2022-25, the years in which the spending is brought in, the negative impact on budget deficits increases each year, to just below \$7 billion in 2025. After 2025, economic growth and the associated tax revenues begin to offset an increasing proportion of the additional care expenditure. By 2030, the deficit is less than \$3 billion larger than it otherwise would have been, while the cost of the additional service delivery is almost \$19 billion.

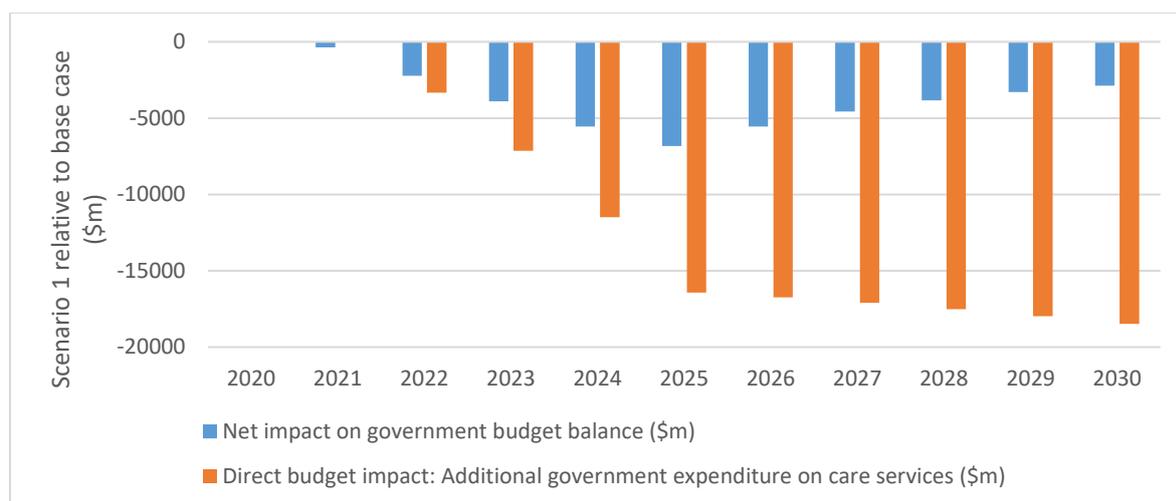


Figure 5: Impact on government budget balance relative to base case (\$m), Scenario 1

3.2 Scenario 2

In Scenario 2, the budgetary cost of the additional expenditure on care is offset by a reduction in government expenditure on infrastructure investment. The overall results are very similar to Scenario 1.

Despite the reduction in government-funded infrastructure investment, the impact on aggregate investment is still positive in Scenario 2, albeit smaller than in Scenario 1 (Figure 6). This detracts only slightly from GDP growth.

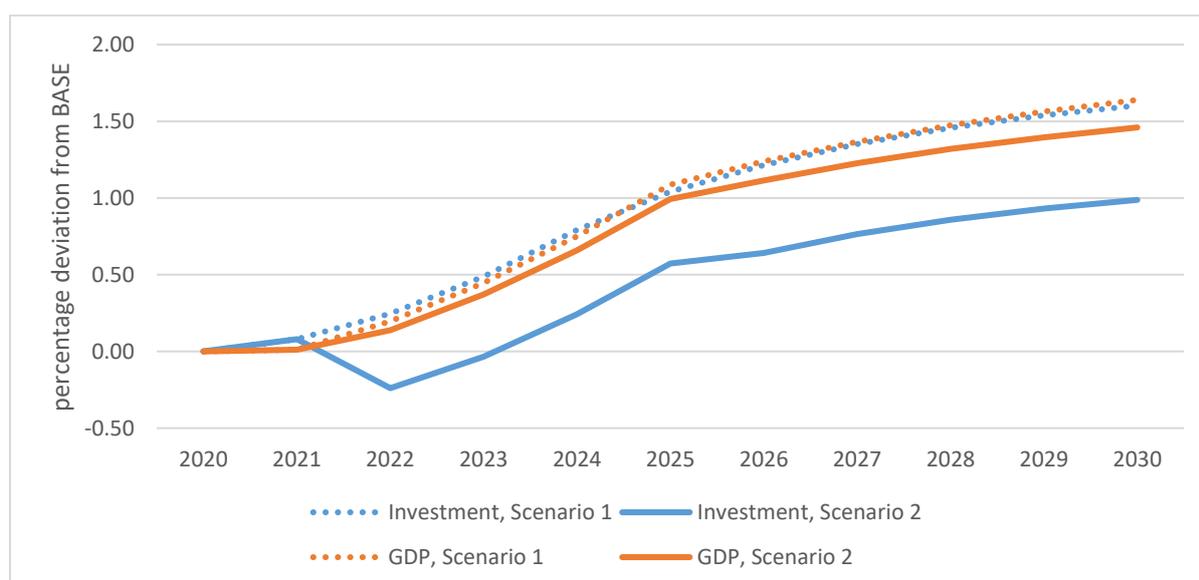


Figure 6: Comparison of GDP and Investment impacts, Scenario 1 and Scenario 2

Industry impacts are similar except there is a notable difference in output in the Construction sector (Figure 7).

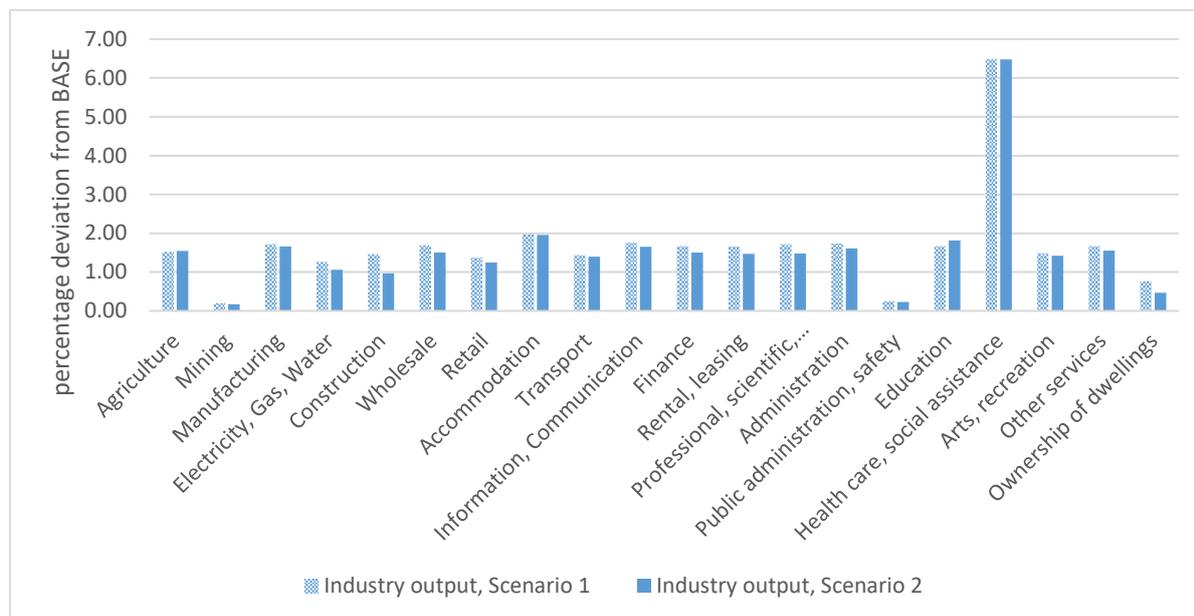


Figure 7: Impact on industry output, 2030, Scenarios 1 and 2

Unlike Scenario 1, in which the government deficit is greater than the base case throughout the simulation period, in Scenario 2, the average deficit is approximately the same as the base case average (Figure 8).

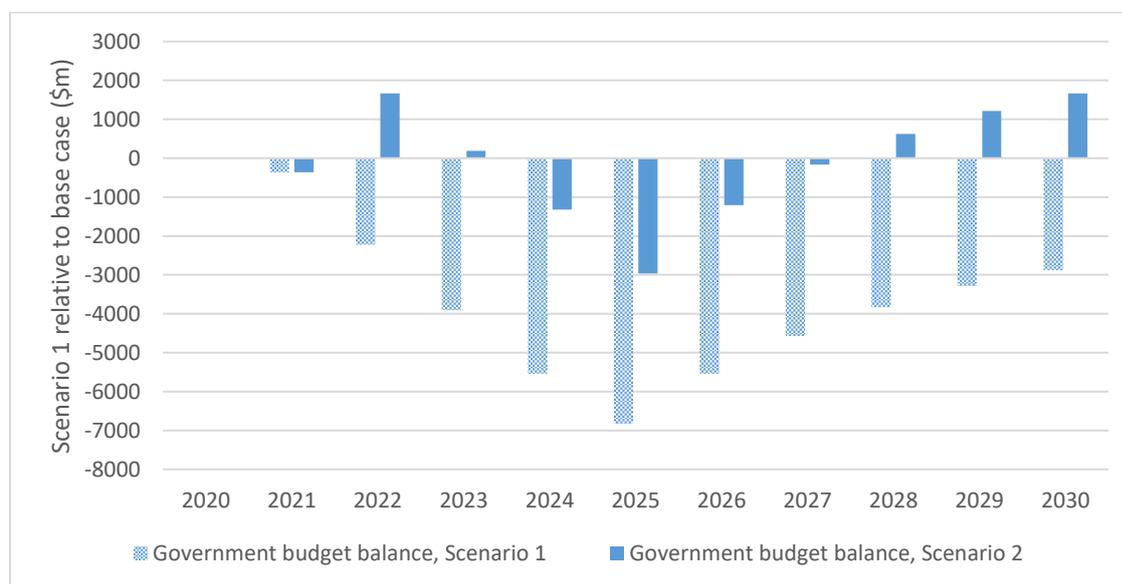


Figure 8: Impact on government budget balance relative to base case (\$m), Scenarios 1 and 2

4 Conclusions

An increase in expenditure on care services delivers clear economic benefits and helps to alleviate female economic disadvantage. Spending on care services delivers a double dividend, of job creation

in the care sector, and positive labour supply impacts for over 900 thousand Australians who perform unpaid work caring for the elderly, disabled and children. More than 70 per cent of the labour supply impact benefits women.

The economic growth derived from additional employment underpins an increase in budget revenue that offsets much of the cost to government of increased service delivery.

An option for achieving a complete offset of the costs of the additional service delivery is to reduce government spending on infrastructure. This option leads to smaller impacts on investment and construction activity, nonetheless the impacts are still positive, as is the overall outcome for GDP and employment.

5 References

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6 Tables

Note – in all tables, “2020” refers to the year ending June 30, 2020 (financial year).

Table 3: Scenario 1 Macro results (percentage deviation from base case unless otherwise stated)

	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
<u>Macro aggregates</u>											
GDP	0.00	0.01	0.20	0.45	0.75	1.09	1.24	1.37	1.47	1.56	1.64
Household expenditure	0.00	0.07	0.29	0.57	0.89	1.17	1.23	1.28	1.33	1.37	1.41
Investment	0.00	0.08	0.25	0.49	0.79	1.04	1.21	1.35	1.46	1.54	1.60
Exports	0.00	-0.14	-0.31	-0.41	-0.44	-0.27	0.07	0.36	0.62	0.83	1.02
Imports	0.00	0.10	0.36	0.67	1.00	1.25	1.26	1.26	1.26	1.26	1.26
Public expenditure	0.00	0.00	0.59	1.23	1.93	2.68	2.67	2.67	2.66	2.66	2.65
<u>Labour supply</u>											
Male	0.00	0.00	0.21	0.42	0.63	0.84	0.83	0.83	0.83	0.83	0.83
Female	0.00	0.00	0.93	1.87	2.81	3.77	3.75	3.75	3.74	3.74	3.74
Persons	0.00	0.00	0.55	1.11	1.68	2.25	2.24	2.23	2.22	2.22	2.22
<u>Employment</u>											
Male	0.00	0.02	-0.03	0.01	0.12	0.27	0.45	0.59	0.70	0.78	0.84
Female	0.00	0.02	0.69	1.46	2.30	3.18	3.36	3.51	3.61	3.69	3.75
Persons	0.00	0.02	0.32	0.71	1.17	1.67	1.85	1.99	2.10	2.18	2.23
<u>Labour income</u>											
Male	0.00	0.03	-0.06	-0.13	-0.17	-0.21	-0.17	-0.12	-0.05	0.02	0.09
Female	0.00	0.02	0.79	1.59	2.44	3.31	3.29	3.31	3.35	3.40	3.46
Persons	0.00	0.03	0.35	0.70	1.08	1.48	1.49	1.53	1.58	1.64	1.71
Government budget balance (\$m)	0	-360	-2228	-3904	-5540	-6827	-5543	-4570	-3836	-3288	-2882

Attachment B

Attachment B

Table 4: Scenario 1: Industry results (percentage deviation from base case)

	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
Industry output											
Agriculture	0.00	-0.05	0.01	0.14	0.33	0.63	0.89	1.10	1.27	1.41	1.52
Mining	0.00	-0.03	-0.08	-0.12	-0.16	-0.16	-0.11	-0.04	0.03	0.12	0.20
Manufacturing	0.00	-0.05	0.00	0.13	0.34	0.66	0.95	1.20	1.41	1.58	1.72
Electricity, Gas, Water	0.00	0.01	0.10	0.24	0.43	0.66	0.82	0.96	1.08	1.18	1.27
Construction	0.00	0.05	0.17	0.36	0.61	0.84	1.02	1.17	1.29	1.39	1.47
Wholesale	0.00	0.02	0.18	0.41	0.71	1.04	1.23	1.39	1.51	1.61	1.70
Retail	0.00	0.06	0.30	0.58	0.91	1.20	1.25	1.29	1.32	1.35	1.37
Accommodation	0.00	-0.02	0.12	0.35	0.65	1.04	1.30	1.52	1.70	1.85	1.98
Transport	0.00	-0.03	0.03	0.17	0.36	0.64	0.86	1.04	1.20	1.33	1.44
Information, Communication	0.00	-0.01	0.14	0.37	0.66	1.01	1.23	1.41	1.55	1.66	1.76
Finance	0.00	0.02	0.18	0.41	0.71	1.03	1.21	1.36	1.48	1.58	1.67
Rental, leasing	0.00	0.00	0.15	0.37	0.65	0.97	1.17	1.33	1.47	1.57	1.66
Professional, scientific, technical services	0.00	0.02	0.16	0.38	0.67	0.98	1.21	1.38	1.52	1.63	1.72
Administration	0.00	-0.01	0.14	0.36	0.65	1.00	1.22	1.39	1.53	1.65	1.74
Public administration, safety	0.00	0.00	0.03	0.07	0.12	0.17	0.20	0.21	0.23	0.24	0.25
Education	0.00	-0.10	-0.13	-0.05	0.11	0.43	0.81	1.11	1.35	1.53	1.67
Health care, social assistance	0.00	0.02	1.43	2.95	4.59	6.35	6.40	6.44	6.46	6.48	6.49
Arts, recreation	0.00	0.02	0.20	0.44	0.73	1.03	1.17	1.28	1.36	1.43	1.49
Other services	0.00	0.03	0.22	0.48	0.80	1.14	1.30	1.43	1.53	1.61	1.67
Ownership of dwellings	0.00	0.00	0.01	0.03	0.09	0.18	0.29	0.41	0.53	0.65	0.77

Attachment B

Table 5: Scenario 2: Macro results (percentage deviation from base case unless otherwise stated)

	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
Macro aggregates											
GDP	0.00	0.01	0.14	0.37	0.66	0.99	1.11	1.23	1.32	1.40	1.46
Household expenditure	0.00	0.07	0.00	0.34	0.69	1.06	1.06	1.12	1.17	1.21	1.25
Investment	0.00	0.08	-0.24	-0.03	0.24	0.57	0.64	0.76	0.86	0.93	0.99
Exports	0.00	-0.14	0.38	0.20	0.09	0.04	0.46	0.70	0.90	1.07	1.22
Imports	0.00	0.10	-0.21	0.18	0.56	0.96	0.87	0.90	0.91	0.93	0.94
Public expenditure	0.00	0.00	0.60	1.24	1.93	2.69	2.67	2.66	2.66	2.65	2.65
Labour supply											
Male	0.00	0.00	0.20	0.41	0.62	0.83	0.82	0.82	0.81	0.81	0.81
Female	0.00	0.00	0.93	1.86	2.81	3.76	3.74	3.73	3.73	3.72	3.72
Persons	0.00	0.00	0.55	1.11	1.67	2.24	2.22	2.22	2.21	2.21	2.21
Employment											
Male	0.00	0.02	-0.11	-0.06	0.06	0.23	0.39	0.54	0.64	0.72	0.78
Female	0.00	0.02	0.61	1.39	2.23	3.14	3.30	3.44	3.55	3.63	3.69
Persons	0.00	0.02	0.23	0.64	1.10	1.63	1.79	1.93	2.04	2.12	2.18
Labour income											
Male	0.00	0.03	-0.21	-0.30	-0.36	-0.39	-0.41	-0.37	-0.33	-0.28	-0.23
Female	0.00	0.02	0.68	1.46	2.28	3.16	3.09	3.08	3.10	3.13	3.17
Persons	0.00	0.03	0.22	0.55	0.91	1.32	1.27	1.29	1.32	1.36	1.41
Government budget balance (\$m)	0	-360	1667	186	-1318	-2963	-1204	-165	622	1218	1670

Attachment B

Table 6: Scenario 2 Industry results (percentage deviation from base case)

	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
Industry output											
Agriculture	0.00	-0.05	0.23	0.32	0.48	0.70	0.98	1.16	1.32	1.44	1.54
Mining	0.00	-0.03	0.05	0.03	-0.01	-0.06	-0.02	0.02	0.07	0.12	0.17
Manufacturing	0.00	-0.05	0.21	0.30	0.46	0.69	1.00	1.22	1.40	1.54	1.66
Electricity, Gas, Water	0.00	0.01	0.05	0.17	0.34	0.56	0.68	0.80	0.90	0.99	1.06
Construction	0.00	0.05	-0.07	0.05	0.24	0.50	0.60	0.72	0.82	0.90	0.97
Wholesale	0.00	0.02	0.02	0.27	0.57	0.91	1.07	1.22	1.34	1.43	1.51
Retail	0.00	0.06	0.00	0.35	0.72	1.10	1.09	1.15	1.19	1.22	1.25
Accommodation	0.00	-0.02	0.21	0.44	0.73	1.08	1.34	1.55	1.71	1.85	1.96
Transport	0.00	-0.03	0.17	0.29	0.45	0.67	0.89	1.06	1.19	1.30	1.39
Information, Communication	0.00	-0.01	0.15	0.37	0.65	0.98	1.18	1.34	1.47	1.57	1.66
Finance	0.00	0.02	0.09	0.33	0.61	0.94	1.09	1.23	1.34	1.43	1.50
Rental, leasing	0.00	0.00	0.11	0.31	0.56	0.86	1.04	1.18	1.30	1.39	1.47
Professional, scientific, technical services	0.00	0.02	0.06	0.25	0.52	0.84	1.02	1.18	1.31	1.40	1.48
Administration	0.00	-0.01	0.16	0.36	0.62	0.94	1.15	1.31	1.43	1.53	1.61
Public administration, safety	0.00	0.00	0.03	0.07	0.11	0.16	0.18	0.20	0.21	0.22	0.23
Education	0.00	-0.10	0.32	0.33	0.43	0.60	1.05	1.32	1.53	1.70	1.82
Health care, social assistance	0.00	0.02	1.37	2.91	4.56	6.33	6.38	6.42	6.45	6.47	6.48
Arts, recreation	0.00	0.02	0.09	0.36	0.67	1.00	1.11	1.22	1.30	1.37	1.43
Other services	0.00	0.03	0.09	0.38	0.71	1.08	1.20	1.33	1.42	1.50	1.56
Ownership of dwellings	0.00	0.00	0.01	-0.01	0.00	0.05	0.13	0.21	0.29	0.38	0.47

7 Appendix: VUEF-G

VUEF-G is a variant of the VUEF model which adds a gender dimension to the existing labour market modelling framework (J.Dixon and Nassios, 2020). We formulate labour supply in a labour-leisure framework in which we also introduce home-produced domestic services (“housework”), which covers activities such as cleaning, cooking, and caring for family members, particularly children. We assume that households choose leisure, domestic services and consumption to maximise utility subject to three constraints: (i) a time constraint on total labour, leisure and housework; (ii) a budget constraint equating household wage income to expenditure on consumption (other than domestic services) and purchased domestic services (such as childcare); and, (iii) a production constraint for domestic services, which are a combination of home-produced and purchased domestic services.

VUEF-G contains all the features of a standard MONASH – style dynamic CGE model [P. Dixon and Rimmer (2002)], namely:

1. equations describing demand for domestic and imported goods and services by industries, investors, households, government and the rest of the world;
2. equations describing demand for factors of production by industries;
3. market clearing conditions for all goods and services and factors of production;
4. zero pure profit conditions determining basic prices of goods and services;
5. equations linking basic and purchaser prices through taxes and margins;
6. equations linking industry-specific capital supply to investment;
7. equations linking investment by industry to expected rates of return; and
8. equations to ensure that wage adjustment is sticky.

These equations are described in detail in many references including P. Dixon and Rimmer (2002) and Adams et al (2015).

VUEF adds to the standard MONASH framework a detailed specification for labour supply. In VUEF, the working-age population is disaggregated into many skill groups. Each skill group chooses its occupational composition of employment by maximising wage income subject to a transformation frontier.

VUEF therefore adds to the standard CGE framework a method for determining occupational employment and wages. However, participation and unemployment rates by skill group are typically exogenous, or simply indexed to their national equivalents. This treatment fails to acknowledge the likelihood that labour supply is more elastic among part time workers, particularly women. VUEF-G addresses this gap by formalizing the differences in time use between men and women.

VUEF-G comprises a large system of non-linear equations which is solved in the GEMPACK software (Horridge et al, 2018).



Budget 2021 – Employment

Working from home overview

The Budget’s significant funding for hard infrastructure and to support women’s economic engagement and safety fails to provide leadership on, or direction for, the transition into a post COVID working life that learns from our experiences with working from home during the pandemic.

It is clear that many workers will want to continue a hybrid model of working from home part-time. This could present significant opportunity to create a more flexible, equitable working life, but it requires leadership and incentives from government to take advantage of these opportunities.

Working from home

Through the COVID pandemic there has been a rapid and large-scale shift towards working from home for many employees. Research suggests that both organisations and employees expect, and would prefer, this significant shift to continue through a permanent hybrid model of working from home part-time and working in the office part-time. For example, multi-national research by the [McKinsey Global Institute](#) suggests that “more than 20 percent of the workforce could work remotely three to five days a week as effectively as they could if working from an office”.

Such working arrangements will affect employees’ abilities to balance paid work and caring responsibilities, as well as impact on workforce planning, and on transport and urban development needs in the future. All of these effects are highly gendered.

The 2021/22 Budget contains no specific measures to provide strategic direction or funding to manage such a transition.

Gender implications

Why is this an issue for women?

Research demonstrates that while many workers have found remote work delivers productivity benefits, it also increases pressure, particularly on those with caring responsibilities, to manage the intersections between their working time and private lives. (See for example, in the UK context, Zoe Young “Work after Covid: lessons from lockdown for resilience and recovery” in Global Institute for Women’s Leadership [Essays on Equality](#) King College London, 2021, p. 43).

Women report the most difficulty in managing their paid work and caring responsibilities, including while working from home.

Opportunities to work from home are only available to some workers, and are concentrated amongst more highly skilled, knowledge-focussed [workers](#). It is important that any large-scale shift to remote or hybrid working models is managed strategically to avoid exacerbating inequalities within the workforce, many of which will have gender effects.

It is important that organisations manage future working arrangements to ensure gender inequalities are not exacerbated, but that ongoing arrangements help workers better balance their paid work and caring responsibilities in a gender equitable manner, and that any gender gaps in preferences do not mean women fall further behind in their career aspirations. Government must provide leadership and incentives and consider regulation, as appropriate.

This leadership should include support and incentives for men to more equally participate in unpaid caring and domestic work. The imbalance in this unpaid work burden between women and men is one of the key barriers to gender equality in Australia and internationally, and it is time the Australian Government seriously focused on this challenge.

Should a significant structural shift towards a hybrid working model emerge post-COVID, this will have significant effects on [urban development](#), as regional and suburban centres flourish at the potential expense of central business districts. The female dominated retail sector and more male dominated public transport sector will likely be affected.

While the Budget includes a [commitment](#) to \$348.0 million over four years from 2021-22 “...for a package of measures to support regional Australia’s sustainability, resilience and job creation” (2021 Budget Paper No. 2: Budget Measures, p. 169), it is not clear that this is informed by strategic thinking about how the future of work might affect our urban and social infrastructure needs, nor with a view to “build back better” post-COVID.

It is disappointing that the 2021/22 Budget fails to consider the ramifications of any such changes and to provide leadership in shaping a more equal future.

What are the 2021 Budget impacts on women?

The missed opportunity to consider the future workforce arrangements to emerge from the pandemic means ongoing changes will be inadequately managed. Some employers may consider the effects on women and men’s work and career opportunities, and there is already emerging literature to support them on this. However, many will not. This is likely to mean that gender inequalities will be exacerbated.

Any long-term effects on the mix and location of retail and transport hubs will affect women and men differently. It is likely that, at least in the medium term as the economy adjusts, effects will fall most heavily on employment prospects in female dominated retail centres in central business districts.

Recommendations

- The Department of Education, Skills and Employment, with advice from the Office for Women and the Workplace Gender Equality Agency, should carefully monitor changes to working arrangements following the pandemic and identify gender implications.
- Government should work with employers, business, unions, academia and relevant civil society organisations to develop best practice models to support workers to manage hybrid working models in ways that support and promote gender equality.
- The Department of Infrastructure, Transport, Regional Development and Communications should develop a strategic approach to urban and social infrastructure that will be needed into the future to support workers to better manage their paid work and caring responsibilities within a more permanent hybrid working model.
- Government should support civil society to develop a gender equality focused recovery plan, similar to the Canadian Feminist Recovery Plan.

References

Global Institute for Women's Leadership *Essays on Equality- Covid-19: the road to a gender-equal recovery* Kings College London 2021 <https://www.kcl.ac.uk/giwl/assets/essays-on-equality-2021.pdf>

KPMG *Ways of working* <https://home.kpmg/au/en/home/insights/2020/05/predictions-after-covid-19/remote-work-reshaping-ways-of-working.html>

McKinsey Global Institute *What's Next for Remote Work* <https://www.mckinsey.com/featured-insights/future-of-work/whats-next-for-remote-work-an-analysis-of-2000-tasks-800-jobs-and-nine-countries>

National Skills Commission *The shape of Australia's post COVID-19 workforce* Australian Government December 2020
<https://www.nationalskillscommission.gov.au/sites/default/files/2020-12/NSC%20Shape%20of%20Australias%20post%20COVID-19%20workforce.pdf>



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Submission to Public Accounts and Estimates Committee
Victorian Parliament of Victoria

Inquiry into Gender Responsive Budgeting

Prepared by: Kathy MacDermott and Helen Hodgson

29 November 2019

Authorisation

This submission has been authorised by the NFAW Board

Professor Helen Hodgson
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Introduction

This submission is being made by The National Foundation for Australian Women (NFAW).

NFAW is dedicated to promoting and protecting the interests of Australian women, including intellectual, cultural, political, social, economic, legal, industrial and domestic spheres, and ensuring that the aims and ideals of the women's movement and its collective wisdom are handed on to new generations of women. NFAW is a feminist organisation, independent of party politics and working in partnership with other women's organisations.

NFAW welcomes the opportunity to respond to this inquiry into the way the Victorian state government budget addresses gender equity. We view the inquiry as particularly timely in the light of its intersection with the government's Gender Equality Bill. Indeed, our recommendations and discussion largely address the intersection of an annual Women's Budget Statement (WBS) with the operational arrangements proposed in the Bill. Our full submission is below.

Recommendations:

NFAW welcomes both the introduction of a Gender Equality Bill and the initiation of this inquiry into the conduct of gender budgeting in Victoria. We congratulate the Victorian Government on its leadership in the area of gender-responsive public policy. We do, however, have some concerns regarding the operational arrangements proposed in the Bill as they relate to gender budgeting, and recommend accordingly that:

Recommendation 1: That the Victorian Government set the relevant targets to measure progress of the Gender Equality Strategy Outcomes Framework and establish monitoring and reporting processes.

Recommendation 2: That the Government amend its Gender Equality Bill to require agencies to undertake their budget impact analyses annually; to give legislated stability to targets, indicators and other reporting criteria; and to give implementation monitoring responsibility to an independent entity—either an established NGO or an independent statutory authority.

Recommendation 3: That, in the absence of amendments to the provisions of the Victorian Gender Equality Bill set out in recommendation 2 above, the government provide legislatively for its Parliamentary Budget Office to take on the task of preparing Victoria's annual WBS. The legislation should mandate comprehensive budget coverage, that is, coverage that identifies both the positive outcomes and the negative impacts of their activities to achieve gender equality.

Recommendation 4: The Office for Women should be tasked and resourced to support departments and agencies to develop spending proposals that are gender sensitive and to understand gender responsive budgeting and gender analysis.

Recommendation 5: That the Victorian Government invite civil society groups representing the interests of women to make their pre-budget submissions earlier in the budget cycle, so that agencies can advise ministers concerning the outcome of those consultations before ministerial priorities are broadly fixed in October.

Submission

This submission responds to the terms of reference through a gender lens.

Each year since 2014 NFAW has conducted a gendered analysis of measures in the Budget, alongside recommendations on how to enhance gender awareness and responsiveness in the Budget cycle. The Gender Lens on the Budget is available at:

<https://www.nfaw.org/page/a-gender-lens-budget>

In this submission our response addresses terms of reference 1, 2 and 5, based on the experience that our organisation has with gender responsive budgeting.

- **Developments in Gender Responsive Budgeting.**

Australia was known as a pioneer in respect of Gender Budgeting. The Australian Government is credited with being the first government to include a formal gender budget statement as part of the 1984 Federal Budget statements. Over the period between 1985 and 1993 all Australian state and territory governments introduced gender budgets.

However by 1996 a WBS was no longer a budget statement, but a ministerial statement that was included within the budget package. The extent of the analysis was no longer a fully costed Budget analysis, but a review of policy and program initiatives. In 2014 the Federal Government ceased the practice of releasing a Women's Statement with the Budget papers.

While the WBS was diminishing in significance in Australia, gender responsive budgeting was becoming an important tool for developing countries to measure changes in economic and social wellbeing for women. The Beijing Declaration in 1995 advocated gender mainstreaming as an integral element of the budget process to "foster the empowerment and advancement of women" (United Nations, 1995), and UN Women has supported more than 40 countries in the introduction of gender-responsive budgeting (UN Women). In developing nations this will commence with the removal of overt bias and resourcing programs to improve the status of women; whereas in developed nations gender mainstreaming is more likely to be applied in developing programs that address social problems and to enable increased workforce participation.

The 2015 OECD Recommendation of the Council on Gender Equality in Public Life contained a reference that members should embed gender equality in the design, development, implementation and evaluation of relevant public policies and budgets. It went on to say members should consider integrating a gender perspective in all phases of the budget cycle (OECD, 2016). Seventeen OECD countries developed a gender budget in 2018, and a further 2 have plans to introduce a gender budget; an increase from 12 in 2016.

- **The Victorian Gender Outcomes Framework**

We note that the Victorian Government has developed a Gender Equality Strategy Outcomes Framework to measure and report progress; however many of the specific targets are yet to be determined (Victorian Government).

Fundamentally, in order to understand and apply the policy dimensions of gender responsive budgeting, policymakers need appropriate data that disaggregates policy outcomes by gender.

Gender responsive budgeting requires three stages of analysis to be effective (Elson, 2002). The first level of analysis is to examine gender based programmes to ensure that they are meeting their required goals. These programmes may be initiatives around violence, health, employment etc. The Victorian Government included a WBS with the 2019/20 Budget that did identify a number of programmes developed to advance gender equality. However gender responsive budgeting that focuses on these headline programs runs the risk of failing to identify systemic issues that impact on women differently to men.

The outcomes of these specific measures should be reported in accordance with the Outcomes Framework. There is a tendency for Governments to headline successful programs, but it is important that negative outcomes, risks and challenges are also presented so that the community can participate in informed decision making in respect of these initiatives.

The second level of analysis is an examination of expenditure within government departments to ensure that principles of equal opportunity are implemented within government. Programs to increase the representation of women on government boards and agencies would fall within this category. We note that these programs are focussed within government, thus can be driven by internal policy directives.

The Victorian Gender Outcomes Framework includes a specific target of 50% of executive positions being held by women, with a number of indicators measuring gender equity within departments. The most effective way to ensure progress on these indicators is to undertake an audit of employment conditions to identify gender gaps; for example conducting internal gender pay gap audits and reviewing employment contracts and agreements to remove anomalies around work flexibility and parental leave. The outcomes of these audits should be reported as part of Departmental Annual Reports.

The third and most challenging level of gender responsive budgeting is assessing mainstream budget initiatives to determine whether the outcome has a gendered effect, whether intentional or not. This applies to both the revenue and the expenditure side of the budget: for example the effect of consumption taxes will be felt more by women; whereas changes in income taxes are more likely to affect men (Sadiq and Hodgson, 2017).

Infrastructure investment is likely to support male employment outcomes, potentially exacerbating gender gaps in workforce participation. More prosaically, the design of parking and lighting in proximity to public transport has a gendered dimension that affects women's safety and health.

It is crucial that this analysis consider what is **not** included in the Budget and how expenditure will intersect with aspects of the economy that are not considered in national accounts, particularly in the unpaid economy. For example, will savings measures and program cuts impact families' and particularly women's caring responsibilities? Are costs associated with care for children, people with disability or the elderly being outsourced to families, particularly women? How do funded programs provide incentives or disincentives to women and men to better share unpaid care work? The response to this analysis could be as simple as ensuring that funding is specifically available to ensure fathers feel included in programs and services for children. It may be as sophisticated as ensuring infrastructure expenditure responds to the needs of individuals and families with caring responsibilities (ie that roads and public transport service shopping and services, rather than just commuters in the CBD)

It is at this level that a more nuanced understanding of the consequences of policy design will pay benefits in improving the status of women. The Victorian Gender Outcomes Framework identifies four domains of gender equity, with 10 outcomes (Victorian Government), some of which can only be achieved by assessing the interaction of policies and changes in the external environment.

Recommendation 1: That the Victorian Government set the relevant targets to measure progress of the Gender Equality Strategy Outcomes Framework and establish monitoring and reporting processes.

- **Political and operational issues**

We have argued above that a WBS should include, as well as budget data itself, evidence-based analysis of the policy intention including any evidence-based evaluation of previous program expenditure. NFAW views these as important components of a WBS, making policy sense of expenditure decisions.

That means that ToR 5 raises the question of how to sustain comprehensive budget coverage, that is, coverage that identifies both the positive outcomes and the negative impacts of government activities to achieve gender equality as well as risks and challenges. This question raises political as well as operational issues, since the extent of WBS reporting and the resources made available to deliver it have in our experience been matters of political will.

- **Background: the Australian experience of politicisation of the WBS process**

NFAW's experience with gender budgeting is largely in the federal jurisdiction. The first WBS was launched by the then Prime Minister Hawke on budget night 1984, which means that we have had 35 years to observe the intersection of party politics and gender budgeting.

According to the Prime Minister's 1984 announcement, the function of the WBS was to 'ensure that within the overall economic objectives of the Government the important decisions we make this year on the Budget are made with the full knowledge of their impact

on Australian women.’ This function was taken seriously: early WBSs were detailed and factual in relation to budget inputs across agency programs, though they remained weak in presenting meaningful pre-budget analysis and post-budget evaluation (Alessandrini 2005; Sawyer 2007).

The great strength of the early WBS was its high level political support, which was replicated at the administrative level by a Task Force of Departmental Secretaries established soon after the Government came to power. That Secretaries’ Task Force played a crucial role in ensuring that resources were made available within portfolio agencies to prepare a substantive and well documented analysis of the gender implications of their budget policies.

Secretaries’ oversight was supported in turn by the Office for Women (then the Office for the Status of Women or OSW) from within the Department of the Prime Minister and Cabinet.

While early WBSs provided a comprehensive statement from each portfolio agency, over time the WBS was removed from the formal budget papers, radically shortened (from over 300 pages in the mid 1980s, radically truncated in the early 2000s and restored to 34 pages in 2011), and progressively transformed into a public relations document for the government of the day. Negative impacts did not appear or were recast to appear positive.

As early as 2002, several researchers began to comment on the shift in the WBS from a critical, analytical, planning document, to a document rehearsing ‘good news’ stories about government initiatives. These commentaries pointed to decreased accountability and transparency resulting from the reduced length and level of budget analysis. They also pointed to the loss of:

- any systematic review of the previous year’s Budget, specifically the lack of gender impact analysis (Sharp and Broomhill 2002),
- cross-portfolio analyses to identify overall government gender impact of the Budget (Alessandrini 2005; Sawyer 2002),
- sufficient evidence to demonstrate the need for action in specific priority areas of the Budget (Alessandrini 2005; Women’s Electoral Lobby 2011).

One of the recurring points made in these commentaries on the federal WBS was that it was heavily reliant on public servants to drive the process (the internal model) while other countries rely on the women’s sector to drive the process (the external model) and sustain the objectivity and comprehensiveness of the analysis.

- **Towards a sustainable and robust Victorian WBS: Models of GRB**

There are two key models of gender responsive budget analysis.

The internal model of Gender Responsive Budgeting is undertaken by a government as part of its budget process, incorporating gender analysis into the policy decisions that are taken.

This form of gender responsive budgeting can only be undertaken within government, however its effectiveness will depend on government measuring outcomes and incorporating gender analysis in the development of policies. As seen in the Australian history, without appropriate feedback of outcomes into policy development, Women's Budget Analysis can become a recitation of headline initiatives unsupported by evidence of outcomes.

The external model of Gender Budget Analysis involves post-hoc analysis undertaken by civil society to critique policy and outcomes, testing the effectiveness of policy decisions (Budlender et al, 2002). This analysis then becomes part of the feedback loop in the policy process.

The UK based Women's Budget Group and NFAW undertake this form of gender analysis. NFAW commenced publication of its Federal Budget analysis "Gender Lens on the Budget" in 2014 after the Federal Government ceased publication of a Women's Statement in the Federal Budget Papers. The 2014-15 Gender Lens on the Budget stated:

"Why a Gender Lens?"

NFAW, with other women's organisations, is committed to examining the potentially differential impacts of policies and their outcomes for men and for women, and whether the consequences of policies, intended or unintended, may adversely impact on women."
(NFAW 2014)

Post-hoc reporting on initiatives forms a critical step to make the gender budget process transparent, but it is the embedding of the process into government policy making that addresses gender gaps. The WBS at the time of the Budget is important for accountability, but the crucial step in ensuring that all government expenditure contributes to gender equality comes in embedding gender analysis throughout the Budget cycle. It is important that gender considerations be included in setting Budget priorities, and that gender analysis is part of building all new spending proposals. It is important that the entire Budget is assessed for its overall contribution to gender equality, and that shortfalls, risks and challenges are identified well in advance of the finalisation of the Budget.

To achieve this, governments must ensure that their public servants understand the priority given to gender analysis of the Budget and are trained and confident in conducting gender analysis. It is also important that there be internal oversight of this process by an agency tasked with gatekeeping spending proposals.

The internal model

At present the Victorian Government is proposing to pursue an internal model for the development of gender budget analyses. If it decides to pursue that course into the long term, and if it wants a WBS that remains fit for purpose, it will need to entrench drivers that resist the exigencies of political change.

The government appears to be proposing a legislative driver of internal reporting. The Victorian Gender Equality Bill embeds a requirement for individual agencies to undertake a gender impact analyses defined as taking in (inter alia) assessment 'of the effects of existing and proposed policies, programs, services and **budgets** [our emphasis] on people of

different genders'. This could mean that Victoria starts well ahead of the game in having a driver that can sustain a WBS over time, and NFAW congratulates the Government for recognising the need to embed gender analysis with a legislative force.

However, in practice the Bill is not really well adapted to the development of an annual WBS for a number of reasons:

- Agency Action Plans and the associated gender impact analysis are to be renewed every four years rather than annually (though reporting on the plans is annual), and so do not serve the interests of informing an annual WBS.
- The Bill provides for matters relating to Gender Equality Action Plans to be reset through regulation at any time, so that the contents and comprehensiveness of gender impact analyses will always remain politically vulnerable. We have seen this practical difficulty arise in the case of proposed changes to gender equality reporting requirements and minimum standards which would have seen a reduction in the data that employers were provided to submit to the WGEA under the *Workplace Gender Equality Act 2012*— a piece of legislation which has clearly been influential in the preparation of the Victorian Gender Equality Bill.
- The terms of the Bill make the public service itself responsible for overseeing its own performance. The government is proposing that the Department of Health and Human Services undertake the task of monitoring implementation of agency gender equality action plans, primarily through the Office for Women. NFAW is concerned that, even with generalised legislative support, agencies will encounter variability over time in the priority they are able to give to the pre- and post-budget analyses expenditure of their activities to achieve gender equality. That has always been a major drawback of the internal model. We lack confidence that a women's policy unit alone, especially one located outside the Premier's Department, will have either the resources or the administrative clout to drive sustained substantive reporting by agencies in the absence of persistent high level political will.

In our view these features of the exposure draft, if they remain in the bill, mean that an internal model for preparing an annual WBS is unlikely to prove sustainable over time. Governments and their priorities will, inevitably, change, leaving the WBS vulnerable.

Recommendation 2: That the Government amend its Gender Equality Bill to require agencies to undertake their budget impact analyses annually; to give legislated stability to targets, indicators and other reporting criteria; and to give implementation monitoring responsibility to an independent entity—either an established NGO or an independent statutory authority.

If the Government does not choose to strengthen its operational arrangements for the Gender Equality Bill, we recommend that it adopt a reporting model for its WBS that will better sustain its vision over time.

This does not mean that the Government and any future government could not also put out its own statement identifying the highlights of its budget for Victorian women along the lines of the current document. After all, all governments want to “sell” their budgets and reap political capital by delivering on their promises and priorities. There is a real, and human, disincentive, for government to publicise where it is falling short at this time of the year. It does however mean that the responsibility of undertaking a broad-based gender analysis of the budget across portfolios, and publicly reporting on the positive outcomes and negative impacts of the budget, may need to be taken outside of the direct control of government.

The external model

As an entity that has taken responsibility for producing an external WBS since the federal government decided to cease producing a WBS in 2013-14, NFAW also has some concerns about the external model for a WBS. These have to do with resources and data access.

At present the Gender Lens on the Budget is prepared by a team of volunteer feminist economists, researchers, policy experts and campaigners. NFAW coordinates the process, which has grown over the past six years but continues to be limited, in particular by its inability to access data held by agencies, the lack of funds to commission impact modelling, and the lack of expert advice in some fields. NFAW has not, for example, been able to systematically cover all areas including women with disabilities, and CALD and Indigenous women.

The closest equivalent to the NFAW Budget Lens that we are aware of is the UK Women’s Budget group, which is also made up of feminist economists, researchers, policy experts and campaigners. That group (<http://wbg.org.uk/>) is much larger than NFAW’s team, and produces research and analysis throughout the year in addition to annual assessments of the UK Spring Budget and Autumn Financial Assessment. It is run by a Management Committee and supported by funding from a range of foundations and NGOs (<http://wbg.org.uk/about-us/funders/>).

From the Victorian Government’s point of view, a Women’s Budget Group along UK lines is not to hand, and a civil society group like NFAW could not be resourced by government without losing its political independence.

The Victorian Parliamentary Budget Office

While no model is without its disadvantages, NFAW is inclined to recommend that the Government explore the scope to provide legislatively for its Parliamentary Budget Office to take on the task of preparing Victoria’s annual WBS. In our view a legislated role for a statutorily independent government entity would offer the best possible compromise between an external and an internal model for WBS reporting.

Victoria has established its PBO under the *Parliamentary Budget Officer Act 2017* --

- (a) for members of Parliament to be provided with ongoing, authoritative, independent and credible policy costing and advisory services; and

- (b) for those policy costing and advisory services to be delivered in a timely, relevant and readily understandable manner; and
- (c) to inform policy development and public debate in Parliament and the Victorian community (s. 5).

In our view the preparation of an independent WBS falls most closely within the remit of the Victorian PBO. Its legislated involvement would signal a serious Government commitment to examining and improving the impact of its budget on women, and could form the basis for a high level/ low cost budget initiative for women. It would also ensure ongoing political commitment to, and interest in, the Women’s Budget process. Because the PBO has direct access to agency data, there would be no data gaps, and because the PBO is independent of government, there would be no ‘whitewash’ stigma.

The clout of the PBO would need to be complemented with the technical expertise of the Office for Women. The Office for Women should be tasked with partnering with the PBO on the internal analysis and building the capacity of the public service across the board. Women’s policy and co-ordination units like the Office for Women notoriously lack power in Australian governments, so ensuring that the PBO operates as the gatekeeper and the Office for Women acts as the technical adviser and capacity support will position it more effectively in government.

In our view, rather than preparing objective post budget analyses, civil society groups would be able to contribute much more effectively to the gender budgeting process by investing their time in substantive submissions to the government respecting budget priorities. If these groups had to hand a robust report from the PBO on the positive outcomes and negative impacts of the May budget on gender equality, they would be in a strong position to make substantive budget submissions to government at an earlier, and much more productive, stage of the budget process before ministers take their budget priorities to government in October.

What we propose is an overall WBS system that looks like this:

How our proposals would fit into the Victorian Budget Cycle

May	The government brings down the budget together with its ‘budget highlights for women’ document.
End June	The PBO issues a full WBS within (say) 30 days of the budget, drawing on budget costings in Budget Paper 3 and agency gender equality settings and annual reports.
End August	Civil society budget submissions due (based on PBO material and the NGO’s own priority-setting).
October	Ministerial priorities are settled and submitted to the Premier along with a gender analysis of these priorities and their impacts on gender equality..
November	Agency annual reports are tabled in line with the Gender Equality Strategy. PBO and OfW work with departments and agencies in developing Budget submissions and in competing a gender analysis of their expenditure

December-April	Final budget priorities and costings are settled.
May	The government brings down its next budget.

Recommendation 3: That, in the absence of amendments to the provisions of the Victorian Gender Equality Bill set out in recommendation 2 above, the Government provide legislatively for its Parliamentary Budget Office to take on the task of preparing Victoria’s annual WBS. The legislation should mandate comprehensive budget coverage, that is, coverage that identifies both the positive outcomes and the negative impacts of their activities to achieve gender equality.

Recommendation 4: The Office for Women should be tasked and resourced to support departments and agencies to develop spending proposals that are gender sensitive and to understand gender responsive budgeting and gender analysis.

Recommendation 5: That the Victorian Government invite civil society groups representing the interests of women to make their pre-budget submissions earlier in the budget cycle, so that agencies can advise ministers concerning the outcome of those consultations before ministerial priorities are broadly fixed in October.

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