



THE MCKELL INSTITUTE

Rethinking Redundancy

FOR THE AUTOMATION AGE

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ABOUT THE MCKELL INSTITUTE

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T H E M C K E L L I N S T I T U T E

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CONTENTS

FOREWORD	6
EXECUTIVE SUMMARY	8
KEY FINDINGS	10
RECOMMENDATIONS	12
PART ONE: THE CHANGING NATURE OF AUSTRALIAN WORK	14
1.1 Automation is changing the nature and quality of Australian jobs.....	16
1.2 Automation in a precarious-work economy.....	17
1.3 Profit-share from automation increasingly flows to capital, not labour.....	24
PART TWO: AUSTRALIA’S INADEQUATE REDUNDANCY FRAMEWORK	27
2.1 The evolution of Australia’s redundancy framework.....	28
2.2 Understanding the gaps in Australia’s current redundancy framework.....	29
2.3 The prevalence of retrenchment in Australia.....	31
2.4 Redundancy doesn’t recognise the mobility of the modern workforce.....	35
2.5 Redundancy coverage is low, and retraining doesn’t always work.....	40
PART THREE: RESHAPING REDUNDANCY	44
3.1 Reshaping redundancy for an age of automation.....	46
CONCLUSION	50
FOOTNOTES	52

FOREWORD

Australian workplaces are changing at an unprecedented pace. The combined forces of technological transformation, liberalised global trade and the COVID-19 economic shock have created a storm of disruption that has, among many changes, seen automation replace many workplace functions – improving productivity, but sometimes leaving workers behind.



MICHAEL BUCKLAND
CEO, MCKELL INSTITUTE

Automation shouldn't be rejected or even feared. The reality is that technological disruption has always been a feature of the economy, and this will continue in the future. But while doomsdayism may be unproductive, there is no doubt that the *pace* of technological transformation presents a major challenge for workers, businesses and policymakers.

While the technological transformation of Australia's economy is inevitable, recent evolutions have coincided with a sustained period of low wage growth, exacerbated by an industrial relations framework that allows high levels of job insecurity and underutilisation. These twin challenges – technological disruption, and increasing job insecurity – have

created a scenario in which many Australian workers feel anxious about their future. In this context, a re-examination of the worker protections that have seen little transformation in recent years is warranted.

This report explores how overdue reforms to Australia's redundancy framework – one of the central guard rails for Australian workers – can mitigate against the worst impacts of automation-induced labour market disruption, while still enabling productivity enhancing innovation.

Redundancy is an important feature of Australia's industrial relations system. But too few workers have access to it, and for many who do, it fails to facilitate a re-entry into the labour market. This dynamic is accelerating as more jobs are displaced by technology – a trend which is not specifically addressed in Australia's redundancy laws.

As Australian workers becomes more mobile and remain in individual jobs for shorter periods, fewer retrenched workers receive

substantive redundancy packages, the quantum of which is tied to the length of service the employee provides. Many workers – especially those dismissed over the age of 50 – struggle to find employment again, and instead are nudged towards the income support system or even early retirement. COVID-19 has exacerbated this dynamic, compounding skills shortages that have emerged during the pandemic.

This report explores the deficits of Australia's redundancy framework, and proposes practical reform ideas designed to leverage Australia's redundancy laws to better insulate Australian workers from potentially profound individualised impacts of technological transformation.

EXECUTIVE SUMMARY

'Automation' and 'disruption' are ubiquitous terms in discussions surrounding the future of Australia's economy. As innovation creates entirely novel industries and transforms old ones, Australian workers are faced with both new challenges and opportunities.

Predictions about the consequences of technological disruption on Australian workers are common. At the extreme end of this debate, some fear that millions of workers will become redundant as automation advances to a point in which there will no longer be a need for human workers altogether. While these prognostications are often hyperbolic, they speak to the anxiety that the community has over the long-term security of their livelihoods in a changing economic climate – concerns which are exacerbated by a safety net that isn't reactive to the pace of change.

Automation in and of itself is not something that should be opposed or feared: innovation drives productivity, can improve workplace safety, and can lead to wealthier societies. But the pace of change does increase the need for policymakers to think deeply about the safeguards that are in place for the workers who risk being left behind. This report highlights on one aspect of Australia's industrial relations framework that needs reform to ensure its relevance in our contemporary economy: redundancy.

PART ONE of this report begins by briefly exploring the changing nature of the Australian economy, and the impact automation and technological disruption is having on work. It notes how the labour-share of income has been declining in recent years, in large part due to technological disruption which have led to real labour costs for the private sector declining despite profits increasing.

At the same time, wages growth has stalled for millions of Australian workers, while jobs have become more precarious, leaving workers with less bargaining power and agency at work. The rise of the gig economy and freelancing reflects an Australian labour market that is more mobile, less secure, potentially at higher risk of automation, and sees millions of Australian workers deemed ineligible for basic workplace entitlements, such as paid leave, sick leave, or redundancy.

PART TWO examines the nature of redundancy and retrenchment in Australia. Every year in Australia, close to three per cent of the workforce is retrenched. Although redundancy law can require an employer to provide up to 16 weeks' worth of pay for worker

who has been made redundant (or more if it is the condition of an Enterprise Bargaining Agreement) this is a rare occurrence, as it is only required if the employee can demonstrate 9 years or more of continuous service with the employer.

The overwhelming majority of those made redundant have been with their employer for less than five years, with 25 per cent having worked with an employer for between 1-2 years. Between 2016 and 2020, 11.3 per cent of Australian workers, a majority of them male, were retrenched.

Despite this context, there are significant gaps in Australia's redundancy framework, which this report details. The current system provides inadequate compensation for many, gives workers too short a time frame to review their dismissal, ignores the impact of 'automation-induced' dismissal, and fails to consistently provide a pathway to re-employment for dismissed workers. This system is shifting too many retrenched workers towards the income support system, and results in many productive, working aged Australians leaving the workforce prematurely.

PART THREE proposes actionable reforms aimed at tailoring Australia's redundancy framework to Australia's modern, dynamic, innovative economy. These proposals focus on harmonising the definitions of redundancy in the *Fair Work Act*, formalising the re-training and re-deployment obligations of larger employers that engage in labour-cost minimisation through automation, giving workers more time to consider or contest the validity of their dismissal, expanding access to redundancy and raising redundancy payments for workers who have been in a job for less than five years, and exploring ways to, in the long term, use a portion of profitability associated with automation for re-skilling and re-employing Australian workers.



KEY FINDINGS

FINDING 1:

Automation is both a driver of productivity and a disruptive force for Australian workers.

While technology has always disrupted the nature of work, the exponential pace of innovation is creating new challenges, and risks leaving many workers behind.

FINDING 2:

2-3 per cent of the Australian workforce is retrenched every year. Between 2016-2020 – before the COVID-shock – this totalled 1.46 million workers, or 11 per cent of the workforce.

FINDING 3:

Only 14 per cent of retrenched workers have been working in their position long enough to receive the maximum redundancy payout of 16 weeks' pay (excluding workers with more generous packages negotiated through EBAs), if they're eligible for redundancy at all.

FINDING 4:

78 per cent of retrenched workers in Australia have been with their employer for less than five years, and 30 per cent for less than two years.

This means most retrenched workers eligible for redundancy are only entitled to modest redundancy payments.

FINDING 5:

54 per cent of workers retrenched between 2014-2021 did not find work within a quarter of their dismissal, either becoming unemployed or leaving the workforce altogether.

FINDING 6:

Australia's current redundancy framework is narrow in its design, with its purposed seen as a financial compensation mechanism rather than a process designed to facilitate re-employment.

FINDING 7:

Utilising the redundancy framework to provide improved pathways to re-deployment within firms and within industries is a powerful policy lever the Commonwealth

Government can pull to ameliorate the worst impacts of automation-induced job losses for individual workers.

FINDING 8:

While 'robot taxes' – or a tax on the profits linked to the productivity associated with automation – have some merit, they are challenging to design, implement and enforce. Governments should

actively explore this policy as a long-term solution to automation-induced job losses, but more immediate solutions, such as the improvements to the redundancy system proposed in this report, should be considered.

RECOMMENDATIONS

RECOMMENDATION 1

Harmonise the definition of 'redundancy' in the *Fair Work Act*, formalising distinctions between 'economic dismissal' and 'automation-induced' dismissal.

RECOMMENDATION 2

Formalise medium and large firms' responsibility to retrain a worker as a condition of 'automation-induced' redundancy being considered 'genuine'.

RECOMMENDATION 3

Extend the time period in which employees' have the right to lodge an unfair dismissal claim from 21 days to 60 days when retrenched.

RECOMMENDATION 4

Raise the floor of minimum redundancy payments, so that all workers made genuinely redundant are eligible for redundancy after six months' service, and most workers receive a minimum of 8 weeks redundancy pay if made genuinely redundant.

RECOMMENDATION 5

Expand the eligibility for redundancy to include casuals, contractors and employees sourced through labour-hire who can demonstrate regular, consistent hours of employment with the primary employer.

RECOMMENDATION 6

Explore long-term legislative approaches to capture a small portion of the productivity-induced excess profits from automation, hypothecating any future revenue into a national training and reskilling 'future fund'.



PART ONE: THE CHANGING NATURE OF AUSTRALIAN WORK

KEY POINTS

- 1 The coalescence of automation, globalisation and COVID-19 have created an Australian economy in which workers are experiencing high levels of job insecurity and low wages growth.
- 2 Profit share between labour and capital has increasingly diverged, leaving many major corporations more profitable, while Australian workers receive a smaller share of the income produced through productivity.
- 3 The rise in the gig economy, sustained levels of 'independent contracting', increasing under-utilisation rates and decrease in full time employment has created a labour market that is more mobile, less secure, more vulnerable to disruption, and poorly protected by redundancy provisions.



1.1: Automation is changing the nature and quality of Australian jobs

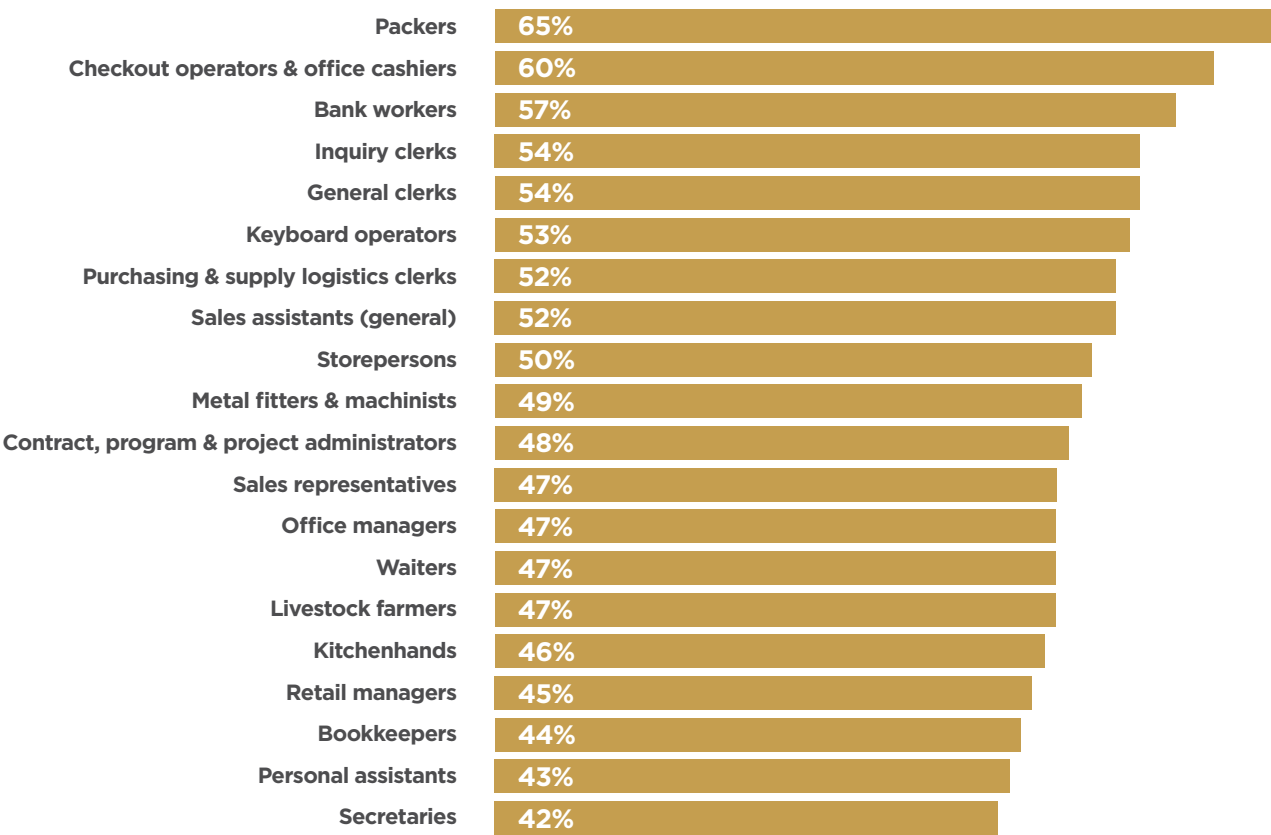
Automation. Disruption. Displacement. Such buzzwords have become part of the daily parlance in discussions surrounding the future of work in Australia. They reflect the growing concerns, fears and anxieties of both the community and policymakers regarding the long-term impact of automation on the viability of human-led jobs in the not-too-distant future.

There have always been real, consequential jobs impacts from the incorporation of new technologies in the workplace. Innovations in agriculture have made many manual jobs a thing of the past. Personal computers have rendered typists an anachronism. And self-serving checkouts have reduced the hours available for thousands of retail workers. In each case, the consequence of technological innovation

on individuals can be real and consequential, irrespective of the broader benefits these innovations might have on society.

The exponential nature of technology-driven disruption means it is challenging to quantify precisely how many jobs will be 'lost' to automation. But credible estimates suggest that at least 15 per cent of the jobs Australians are working in 2021 will be eliminated – if not significantly reimagined – a decade from now.¹ From an economy-wide perspective, this might not be disastrous – old 'redundant' jobs are typically replaced by new, previously unimagined ones. But individuals on the frontline of this technological revolution, the consequences can be significant.

FIGURE 1.1 ESTIMATES OF THE LIKELIHOOD OF AUTOMATION IN CERTAIN JOBS.



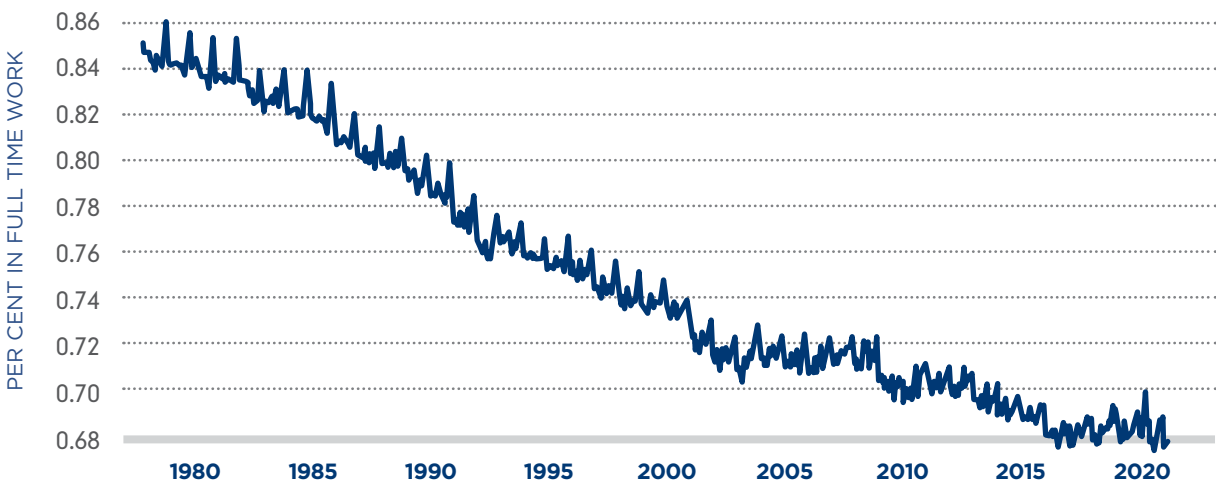
Source: AlphaBeta.

1.2: Automation in a precarious-work economy

Automation isn't the only threat to Australian workers. Increasingly, the anxiety induced by fears of technology replacing individual jobs is felt alongside the pressures associated with job insecurity. 'Insecure work' can be defined as work that 'involves uncertainty over the length of the job, inferior entitlements such as limited or no access to paid leave, irregular and unpredictable working hours, working hours that are too long or too few, unpredictable pay, and a lack of voice at work on wage, conditions and work organisation'.²

This includes casual workers, independent contractors and those on fixed term contracts. The number of workers working in stable, full-time jobs has continued to decline over the last three decades. This is consistent with trends in other OECD economies, where insecure work has also steadily increased.³

FIGURE 1.2 NUMBER OF WORKERS IN FULL-TIME WORK AS A PROPORTION OF EMPLOYED PERSONS, TOTAL.



This overall decline in full time work can be explained by a number of factors. First, declining union membership has increased employer power in the workplace, which has been assisted by legislative change. Further, the decline can be explained by the broader shifts in the macroeconomy. As the economy has shifted away from manufacturing and agriculture towards services, more Australians are expected to work irregular hours to meet the demands of a 24/7 economy.

Increased automation and job insecurity coincides with a period of wage stagnation

Since the end of the Global Financial Crisis, Australian workers have not only been confronted by workplace transformation and job insecurity, but by a sustained period of low wage growth. In the early 2000s, annualised wage growth regularly exceeded 3 per cent, outpacing increases to the cost of living, given millions of Australian workers a sense that they were getting wealthier. In recent years, however, the pace of wage growth has declined – and is forecast to decline even further. In *Budget 2021-22*, Treasury forecast that wages will grow at 1.25 per cent in FY2021-22, while expecting inflation to hit 3.5 per cent. This results in a net real pay cut of 2.25 per cent over the next financial year. This trend of record low wages growth is expected to continue through to 2025 (see *Figure 1.3*).



FIGURE 1.3

WAGE GROWTH ESTIMATES, VS ACTUAL WAGE GROWTH, IN RECENT BUDGET YEARS. PERSONS, TOTAL.

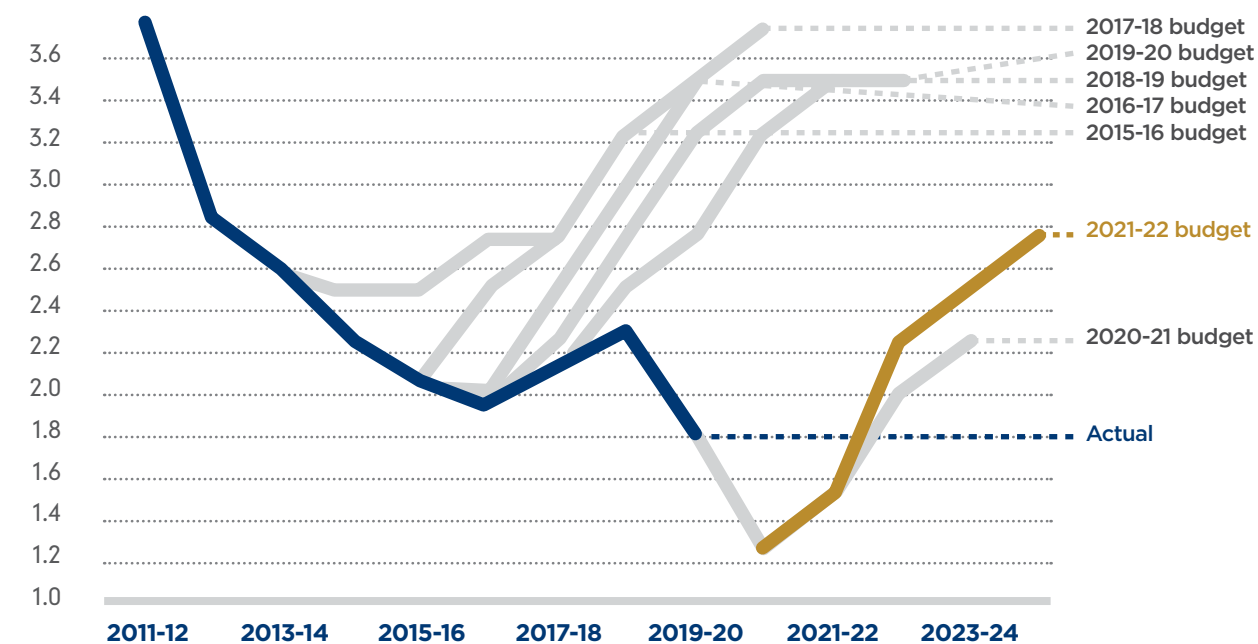
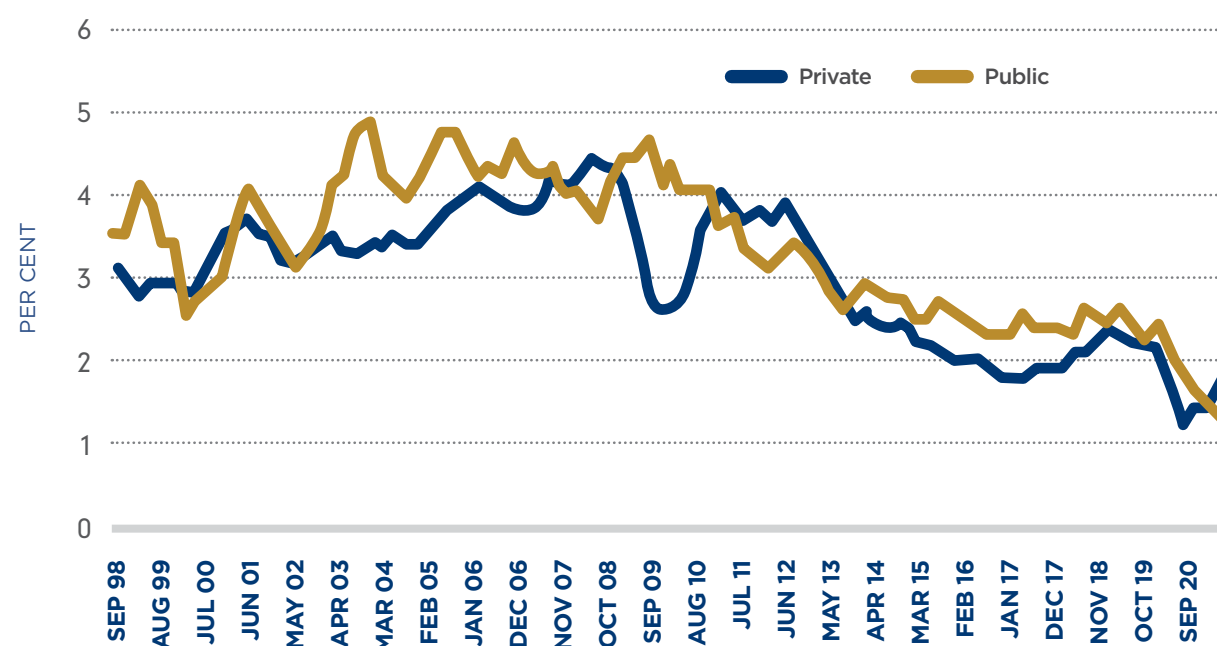


FIGURE 1.4

WAGE PRICE INDEX, PUBLIC AND PRIVATE, 1992-2020.



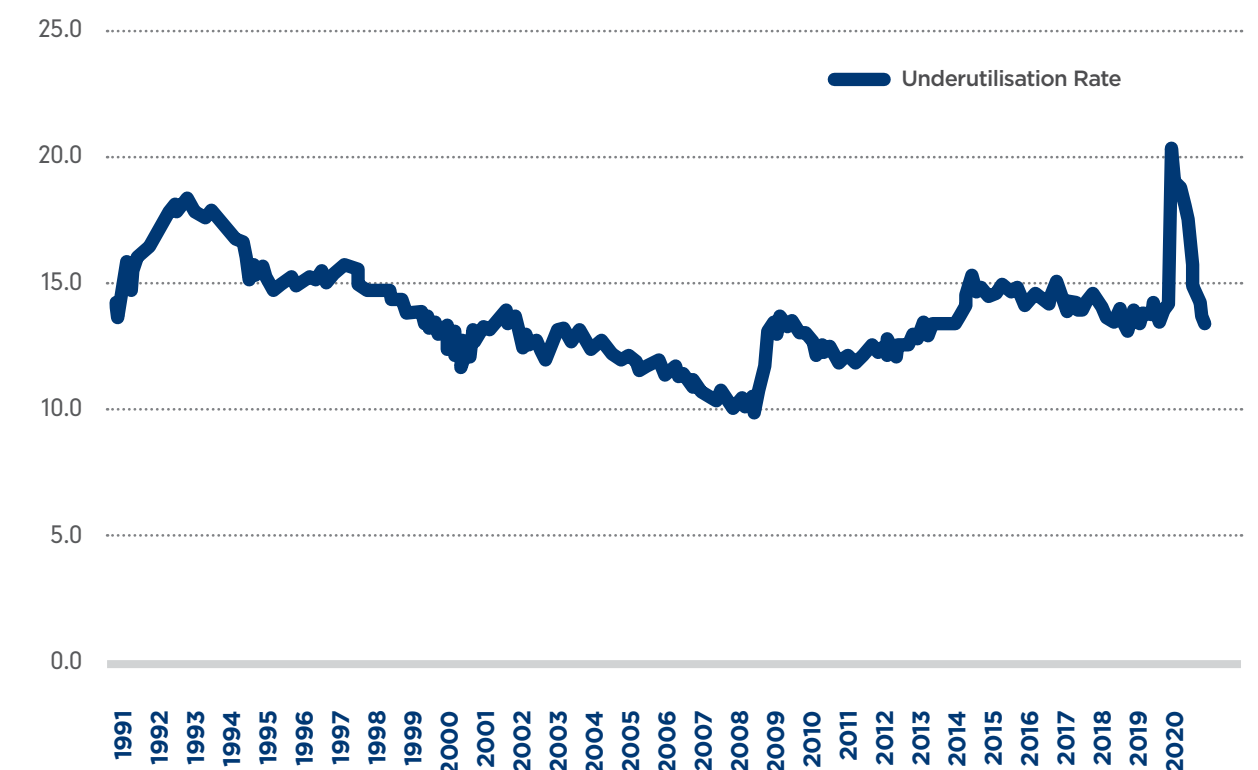
Source: ABS.

The headline unemployment rate masks sustained labour market slack

The slow pace of wage growth has several determinants. While conventional economics assumes that, as the unemployment rate lowers, wage growth should hasten, this has not been the recent experience in Australia. This is due to the sustained slack in the labour market which the headline unemployment rate doesn't illustrate, as well as declining worker bargaining power, the prevalence of precarious work, and the widespread use of temporary migration in the Australian labour market – all of which limits worker agency, and tips the power balance in favour of employers.

Budget 21/22 forecast a reduction in the headline unemployment rate to 4.5 per cent by 2025. This is welcome – but policy that solely aims to chase this rate, rather than drive down the rates of underemployment and underutilisation, will only have a modest impact on wages.

FIGURE 1.5 UNDERUTILISATION RATE, ALL PERSONS, 1992-2021.



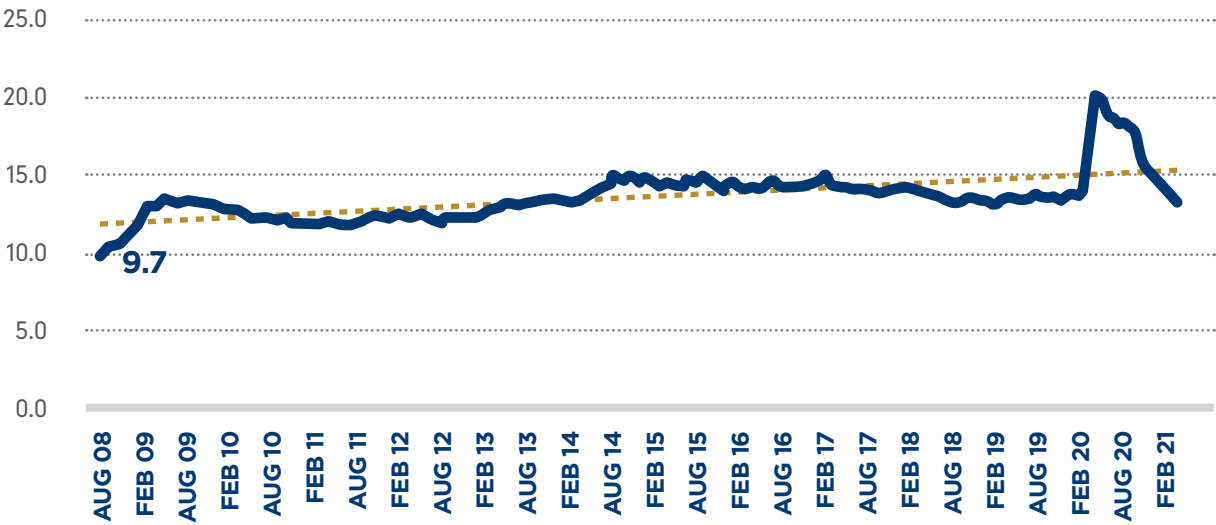
Source: Australian Bureau of Statistics, Labour Force, Australia September 2021

Between the early 1990s recession and the Global Financial crisis, the underutilisation rate (which measures unemployment and underemployment) steadily declined, falling as low as 9.7 per cent in mid 2008 (see Figure 1.5). Since the GFC, however, this trend has been reversing (see Figure 1.6). The rate of underutilisation means that, in addition to those seeking employment, there are hundreds of thousands of Australian workers that are eager to work more hours – this constitutes a significant labour market slack that is ultimately constraining wages growth.



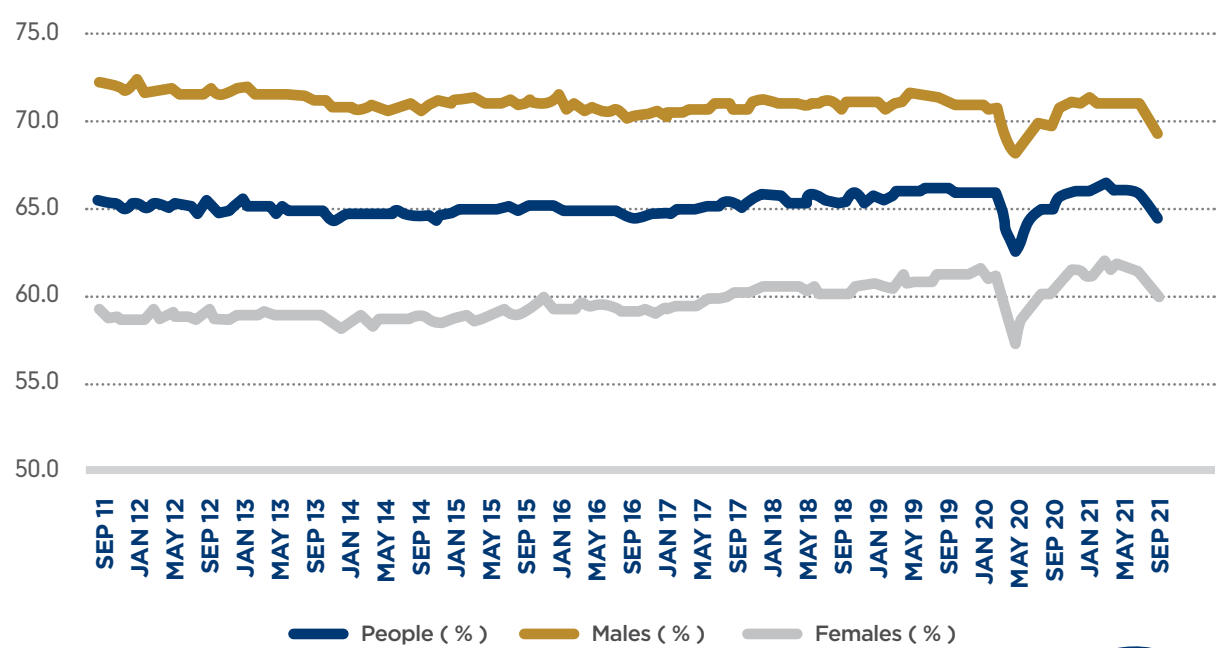
These are not naturally occurring phenomena, however, but the result of policy choices that have permitted insecure work to become the norm in many industries. The economy-wide wage growth challenges are also exacerbated by intentional government policy aimed at minimising public sector labour costs – a decision which has a causal relationship with low wage growth elsewhere in the economy. Public sector wages act as a signal for other industries,⁴ and multiple studies have shown a causal effect of increased public sector wages on private sector wage growth, with scholars routinely identifying the setting of public wages as an important policy tool for governments in addressing wage stagnation.⁵

FIGURE 1.6 UNDERUTILISATION RATE, ALL PERSONS, SINCE THE GFC.



Source: ABS.

FIGURE 1.7 PARTICIPATION RATE, 2011-2021.



Source: Australian Bureau of Statistics, Labour Force, Australia September 2021.



Automation enhances productivity, but drives labour displacement

Because of the rise of insecure work in Australia, the potential jobs impacts of automation carry extra significance, further weakening Australian workers' bargaining power. The adoption of novel technologies aimed at improving productivity in the workplace cannot, and should not be stopped. Innovation is a key driver of economic growth, and the mechanisation of many core labour functions throughout recent decades is yet to lead to mass unemployment. It is noteworthy that despite the continual incorporation of new technologies throughout Australia's economy, the overall displacement rate of workers has not accelerated significantly. As Taylor et al (2019) note:

“ Only at first glance does the prospect of automation appear gloomy. Our mid-point scenario for Australia estimates 25 per cent job displacement by 2030 due solely to automation (an average of 2 per cent per year). This is not far from the 30 per cent of jobs that disappeared within 15 years during the decline of agriculture in Germany or the exodus of manufacturing from the United States. Furthermore, through the continuing boom years of 2000-16, Australia averaged 3 per cent job displacement or redundancy a year.”

– TAYLOR ET AL⁶

Researchers have consistently found, when examining the impact of automation through an economy-wide lens, that new jobs are often created, minimising macro impacts on unemployment. This reality, however, creates a scenario where policymakers are often presented with two competing narratives regarding disruption. The first argues that automation will make workers redundant, leaving millions of

and dependent on welfare to survive. The second narrative argues that disruption is necessary, but ultimately most jobs lost to automation will be recovered elsewhere in the economy. Both of these simplistic interpretations, however, ignore the lived experience of individual workers who are made redundant as a result of automation.

The case of Australia's manufacturing industry offers a useful example of how new technologies and increasingly globalised supply chains can displace Australian workers, ultimately ending many workers' careers prematurely. Manufacturing still plays an important role in the Australian economy, but its role as a major jobs creator has been diminished. The mechanisation and automation of manufacturing has lessened the labour inputs required to perform manufacturing in Australia.

This has led to a gradual decline in jobs within Australia's manufacturing sector.⁷ If examined through a wide lens, the jobs decline in Australian manufacturing has been offset by the creation of new jobs in other sectors. But this macroeconomic reality is of little comfort to the individual workers within the manufacturing sector who have been made redundant, or ended their careers early, leading to a reliance on income support.

The manufacturing industry case study draws attention to the potential impact of technological disruption in other sectors. A majority of jobs created in Australia today are in the services sector, which has historically been less susceptible to automation. As services become increasingly automated, however, the impact of technological disruption seen in manufacturing and industrial settings will become more common elsewhere.

Given this trend, it is estimated that around 2.7 million Australian jobs that exist now will no longer exist by 2034. Those mostly at risk include male-dominated roles including construction, transport, and mining. Roles in healthcare and social assistance will also see the same automation, largely affecting women. Of those losing jobs to automation, an estimated 400,000 will not be able to find secure work.⁸

The gig economy is now a large part of the modern Australian economy

Another major trend disrupting the workforce has been an increased take-up of jobs in the gig economy. Minimal barriers to entry and promises of flexibility have attracted an increasing number of Australians. Due to its nature, it is difficult to quantify the number of Australians working “gig” jobs. A 2015 study by Deloitte Access Economics estimated that 32 per cent of the workforce had freelanced between 2014-2015.⁹

Policy surrounding the status of gig workers is poorly developed in Australia, despite criticisms of poor job security, disparagingly low wages, and lack of benefits associated with traditional employment such as personal leave or other entitlements. Throughout the COVID-19 pandemic, workers for Uber saw their average earnings drop almost 80 per cent while those working for Amazon or Deliveroo became classified as essential workers.¹⁰

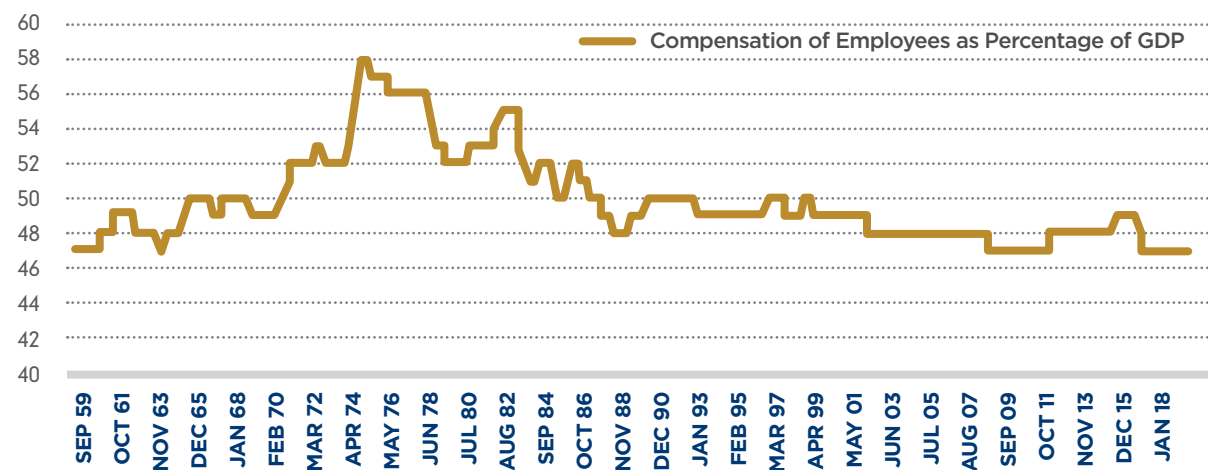
In March 2021, Uber was forced to classify its workers as employees in the UK, and has been forced to pay a minimum wage, holiday pay and other provisions.¹¹ This came after a review over drivers' legal status as employees. The Prop 22 vote in California required businesses to pay gig workers 120 percent of the minimum wage under similar revisions of work insecurity.¹² No such policy exists in Australia, despite evidence that the average net hourly wage of an Uber driver in Australia is less than minimum wage at just \$14 per hour.¹³



1.3: Profit-share from automation increasingly flows to capital, not labour

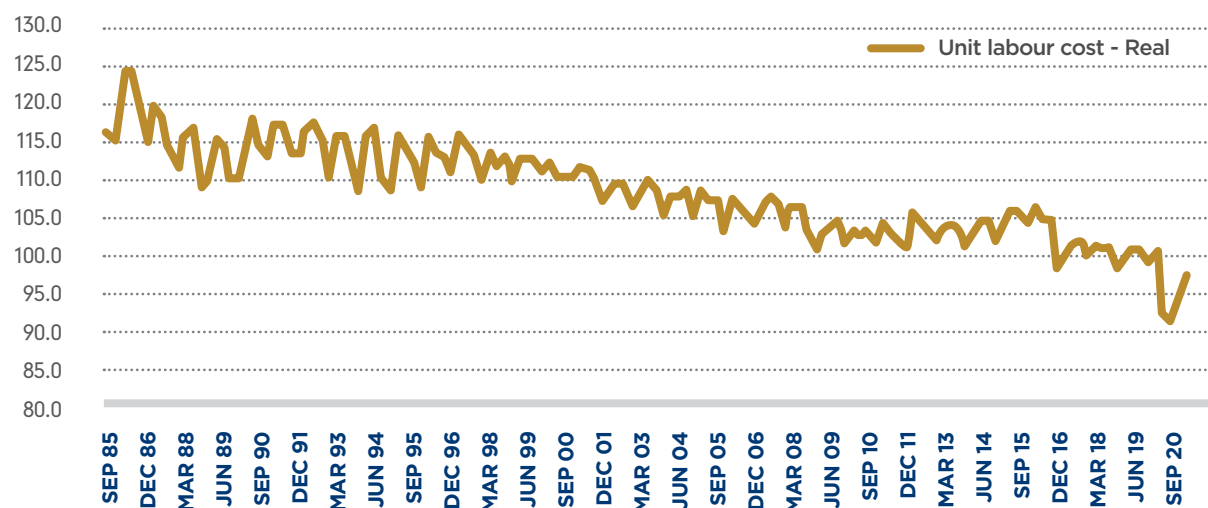
For an individual business, the main incentive towards automation is increased profit. Automation in theory leads to increased output per individual worker, meaning a higher profit overall.¹⁴ Therefore, if automation is managed poorly, it could lead to increased inequality. Those who manage capital, businesses and firms will see gains resulting from the increased profits.¹⁵ Meanwhile those low-skilled and semi-skilled workers, who are on lower wages anyway are the most at risk from having their jobs automated. *Figures 1.8 and 1.9* demonstrate the declining labour costs for employers, as a percentage of GDP, throughout the Australian economy over the longer term.

FIGURE 1.8 EMPLOYEE COMPENSATION AS A PERCENTAGE OF GDP, 1959-2018.



Source: ABS.

FIGURE 1.9 DECLINING UNIT LABOUR COSTS SINCE THE LIBERALISATION OF THE AUSTRALIAN ECONOMY IN THE 1980S



Source: ABS.



The COVID-19 pandemic has exacerbated these trends

The emergence of the COVID-19 pandemic, and the associated lockdowns, highlighted the consequences of precarious work. Before the introduction of the JobKeeper subsidy in May of 2020, it was casual employees, as well as independent contractors, that were the first to lose work. Between February and April of 2020, 2.7 million Australian workers were either stood down, or significantly lost hours at work.¹⁶ A significant portion of these job losses, and loss of hours, were felt in sectors already experiencing higher rates of insecure work, such as non-essential retail, hospitality, tourism, and entertainment.

There was, however, a different story to be told in relation to essential work in industries such as retail, healthcare and caring, warehousing, food processing, transport and delivery. Major supermarket chains saw a large increase in staff numbers, as Australians' demand for basic food items shifted away from hospitality businesses during lockdowns. During COVID-19, consumers have also embraced new ways of purchasing essential items, shifting to services like 'click and collect' and the home delivery of groceries.

In accommodating these consumer demands, essential retailers have engaged in new hiring, while also achieving healthy profit margins throughout the pandemic. The experience of essential retail demonstrates how COVID-19's economic shock has led to a bifurcation of the economy, where insecure workers in 'non-essential' industries have been most adversely impacted, while workers in high-demand service sectors, like essential retail, have in fact had to meet unprecedented demand.

PART TWO: AUSTRALIA'S INADEQUATE REDUNDANCY FRAMEWORK

KEY POINTS

- 1 Redundancy is a central element of Australia's industrial relations framework, allowing businesses to incorporate productivity enhancing technology while, in theory, protecting workers who are displaced by advances in business practices.
- 2 Australia's redundancy framework, however, is insufficient: it excludes too many workers, poorly compensates those who are eligible, and ensures no pathway to re-employment.
- 3 11 per cent of Australian workers were retrenched between 2016 and 2020, a majority of whom had been with their employer for less than five years, meaning they received less than eight-weeks' pay as a redundancy package if they were eligible.
- 4 Australia's inadequate redundancy framework pushes workers towards the income support system instead of providing a pathway to re-employment. This disproportionately affects workers aged 50 and over, leading to avoidable early retirements.

2.1: The evolution of Australia’s redundancy framework

In Australia, the laws governing economic dismissal, and the responsibilities of employers when engaging in economic dismissal, have constantly evolved. In the post-war era, there were fewer protections for Australian workers facing dismissal, which to some degree reflected the full-employment policies of successive governments that had led to low unemployment rates low. As the economy changed throughout the 1960s and 70s, however, state-based regulations emerged that offered compensation to employees as a result of their dismissal, reflecting the reality that unemployment – and particularly sustained unemployment – carried significant long-term costs.

It wasn’t until the 1980s, however, that national standards on economic dismissal and redundancy began to emerge. The 1984 *Termination, Change & Redundancy Case* decision by the Australian Conciliation and Arbitration Commission, was particularly important, as it led to pre-dismissal consultations between employers and employees – which facilitated redundancy payments – to become commonplace in all awards.¹⁷ In 1993, the Keating Government, for the first time, codified

regulations and definitions regarding redundancy, leaning heavily on *International Labor Organisation* conventions. Although the 1996 amendments to the Workplace Relations Act (WR ACT) rolled back certain employee rights, it wasn’t until the Work Choices Act in 2005 that more significant changes to redundancy were legislated.

The Howard Government’s changes to unfair dismissal laws and redundancy provisions in the Work Choices Act were highly controversial, but they also, for the first time, included specific wording that enabled dismissal on the basis of technological innovation. In Work Choice’s explanatory memorandum, a specific example of automation-induced job loss was cited as a way in which dismissal would be deemed legitimate, stating “a termination by reason of redundancy because a machine will do a job that was previously done by an employee” constituted a reasonable dismissal.¹⁸ With the defeat of the Howard Government in 2007, the newly elected Labor Government began the process of reforming Australia’s industrial relations framework, with the eventual passage of the *Fair Work Act 2009* forming the basis of the current regime.

TABLE 2.1 THE EVOLUTION OF AUSTRALIA’S REDUNDANCY FRAMEWORK.

TIMELINE OF REDUNDANCY’S EVOLUTION IN AUSTRALIA		
Post-war era	No framework	No redundancy/full employment policy.
1960s-1980s	State based systems	Australian states begin introducing compensation for ‘arbitrarily’ dismissed employees
1984	Federal decision sees uniformity begin	Termination, Change & Redundancy Case establishes consultation rights for dismissed employees, ‘hard, unjust or unreasonable’ dismissal prohibited
1993	IR Act introduced	Industrial Relations Reform Act codifies dismissal federally for the first time
1996	WR ACT	Howard Government amendments to IR (Workplace Relations Act) weaken employee dismissal rights, but retain redundancy provisions
2005	Work Choices	Specific mention of automated job loss cited as a legitimate reason for dismissal
2009	Fair Work Act	Current framework and language regarding redundancy established

Source: Various.

2.2: Understanding the gaps in Australia’s current redundancy framework

Australia’s redundancy framework is primarily codified in *Division 11, Subdivision B, s119* of the *Fair Work Act 2009*, though is referenced elsewhere in the Act, and in the National Employment Standards. This section of the Fair Work Act specifies the responsibilities of employers are when making employees redundant, and establishes minimum payouts for redundant employees based on the tenure of their employment. The entitlement to redundancy pay in the Fair Work Act is defined as the following:

TABLE 2.2 S119 OF THE FAIR WORK ACT.

Entitlement to redundancy pay	
1.	An employee is entitled to be paid redundancy pay by the employer if the employee’s employment is terminated:
a.	at the employer’s initiative because the employer no longer requires the job done by the employee to be done by anyone, except where this is due to the ordinary and customary turnover of labour; or
b.	because of the insolvency or bankruptcy of the employer.

It is important to note that this provision only applies to permanent part-time and full-time employees, not casuals or independent contractors. While s119 offers a definition for redundancy, the numerous mentions of redundancy provisions elsewhere in the Act are potentially problematic. As Schofield-Georgeson notes, “the Fair Work Act 2009...establishes various rights and obligations related to redundancy that define the concept differently. These provisions are scattered throughout the FW Act and operate independently of one another”.¹⁹

The redundancy language enables automation-induced retrenchment

The way Australia’s redundancy laws are written show no distinction between ‘economic dismissal’ – either the result of business reorganisation or failure – and intentional, labour-cost minimising ‘automation-induced’ retrenchment. The use of the phrase ‘the employer no longer requires the job done by the employee to be done by anyone [emphasis added]’ is one piece of enabling language that allows employers to replace job functions with automated technology with relative impunity. As Schofield-Georgeson (2020) further argues:

“ Current definitions of redundancy are inadequate to address the problem of automation-led mass unemployment. More specifically, the current conception conflates all economic dismissals, treating them similarly...redundancy resulting from machine-led automation should be redefined, in order for it be treated differently from other kinds of economic dismissal.”²⁰

As this report has outlined, automated technology cannot – and should not – be rejected, as embracing innovation is essential for economic productivity and growth. But this language does create significant room for employers to replace existing job functions with lower cost automated technologies, and legitimately use the redundancy provisions to minimise labour costs while the same job function is performed, albeit by technology and not ‘anyone’.



If the redundancy framework provided a more credible path to re-employment for any employee subject to this kind of retrenchment, this language would be less problematic. However, *Division 11, Subsection B* includes details several additional scenarios through which an employer terminating an employee can avoid their redundancy obligations. Some of these provisions are designed to incentivise reemployment, such as *Section 120, b, i* which stipulates that, if the employer 'obtains other acceptable employment for the employee' they can avoid redundancy payments. However, certain provisions with *Division 11* creates opportunities for employers to minimise their redundancy obligations, and ultimately pursue the types of restructuring that will lower labour costs – be it through automation, or cost-shifting by utilising labour-hire firms.

'Acceptable employment' is ill defined with regards to re-deployment

Section 120, b, i enables employers to avoid redundancy responsibilities if they are able to 'obtain other acceptable employment for the employee'. This is ostensibly designed to incentivise the employer to not retrench an employee, but to rehire them elsewhere within the business, prior to retrenching them.

This provision, however, does not detail as to what qualifies as 'acceptable employment'. There is no language within the division that would prohibit, for example, the employer offering an employee a position within the firm that sees the employee paid less than in their previous role, or shifted to a less secure position. This problem is also evident in *Section 389* of the *Fair Work Act*, which deals with unfair dismissal. In this section, a dismissal is deemed 'not a case of genuine redundancy' if the 'it would have been reasonable in all of the circumstances to redeploy the person within a) the employer's enterprise, or b) the enterprise of an associated entity'.²¹ The use of the phrase 'associated entity' permits employers shifting their employees to third-party, but associated, employers, which could be labour-hire firms.

These redeployment provisions may be designed to ensure employers first find alternative means of employment for their employees before making them redundant. But there is no specification towards the quality of the job that an employer should

offer to an otherwise retrenched employee. This, in theory, enables employers to avoid engaging in the redundancy process by coercing employees to accept an alternative job within the firm that is subject to less pay and less favourable conditions.

There are measures within the division that allow employees to protest, via the Fair Work Commission, their dismissal or redundancy, but the 21-day time limit on any protestations gives employers an inherent advantage. Most employees who are made redundant only receive a few weeks redundancy pay, as will be noted later in this report. This means that workers who are made redundant only have a short window of time to find alternative employment, before being forced onto income support. The 21 day protest period creates a situation for a retrenched employee in which they are forced to engage in an onerous unfair dismissal case, or pursue alternative employment. Indeed, the redeployment provisions within the Fair Work Act have been billed a 'tiger with no teeth' by scholars.²²

Automation-induced job loss is not specifically considered in redundancy laws

The way in which the redundancy provisions are written in the Fair Work Act, the replacement of a job by another worker cannot be considered a genuine redundancy, but if that job function is replaced by automated technology, it can be. This enables necessary innovation within workplaces, but also fails to consider and protect against its impacts.

For example, in if a cashier is offered a redundancy but another individual worker is then hired to perform that job function, the redundancy would be deemed 'ingenuine'. If that cashier's exact job function was replaced with automated technology, however, it would be deemed a 'genuine' redundancy, despite the fact that the exact same job function is being performed for the benefit of business.

This reflects the inadequacy of the existing redundancy provisions when it comes to safeguarding workers from the disruptions of automated job functions. Given the risks to individual livelihoods due to automation, the redundancy system could be amended to create more obligations on behalf of employers to provide pathways to the reemployment of workers who fall victim to disruptive technologies.

2.3: The prevalence of retrenchment in Australia

1.43 million Australians were retrenched in the last five year period

Retrenchment, which can lead to redundancies, is a common occurrence in the Australian labour market. Each year, over 300,000 Australian workers experience retrenchment. For those who qualify for redundancy after being retrenched, Australia's redundancy framework often doesn't achieve its core objective, providing inadequate levels of support that drives many workers into early retirement, which can prematurely push working-age Australians towards the welfare system. As Schofield-Georges (2019) again notes,

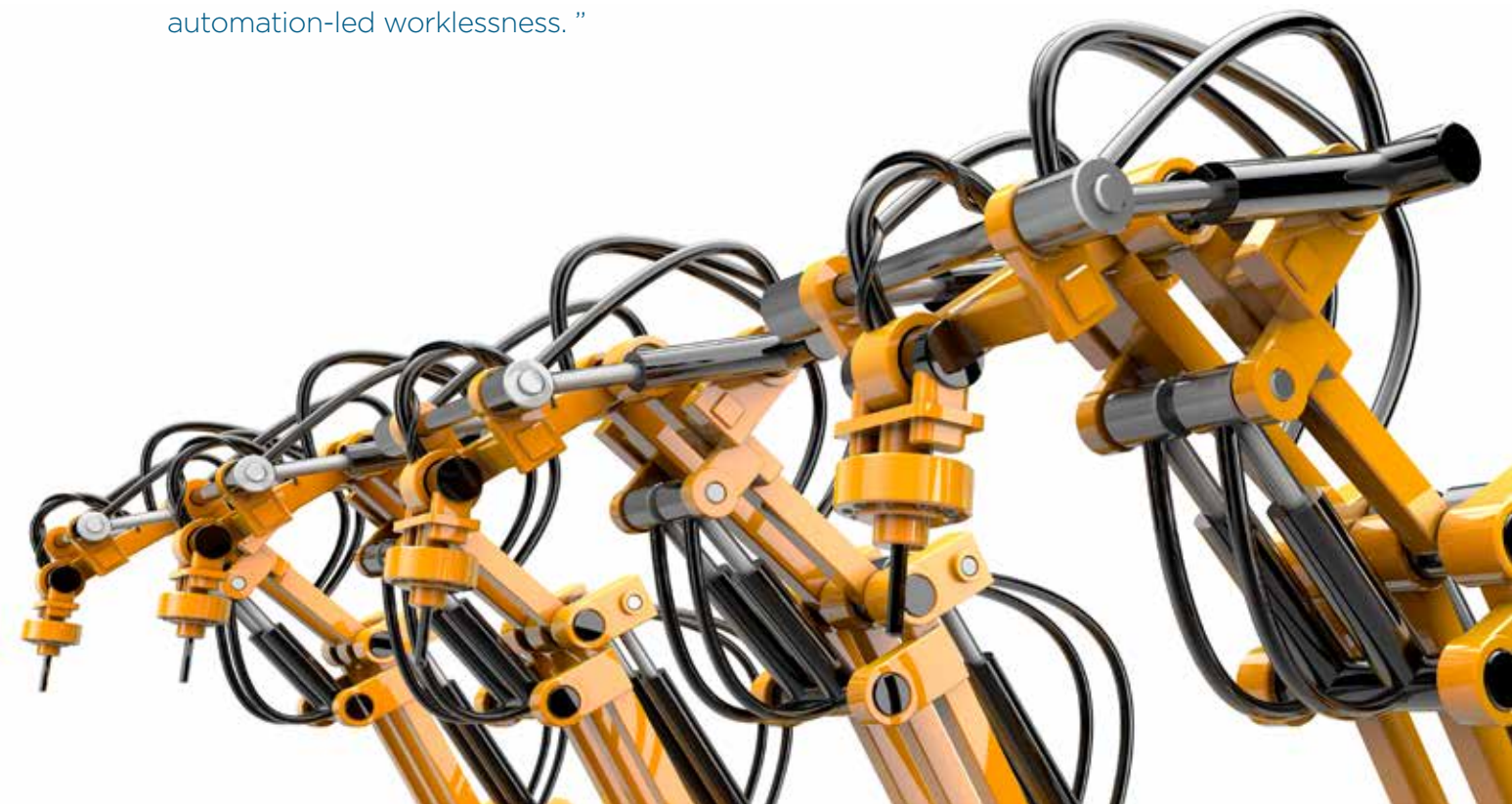
“ There are three key problems associated with the current scale of Australian redundancy pay. First, it fails to adequately compensate workers. Second, it lacks a sufficient deterrent effect on employers who would seek to automate their workforce. Finally, in the face of mass unemployment, it may lead to a macro-economic crisis in which the state is unable to pay for a significantly increased welfare state at a time of automation-led worklessness. ”

11 per cent of Australian workers were retrenched between 2016-2020

Data released in February 2020, covering the five-year period in the lead up to the COVID-19 pandemic and the associated recession, found that 11 per cent of the workforce had experienced retrenchment since 2016.

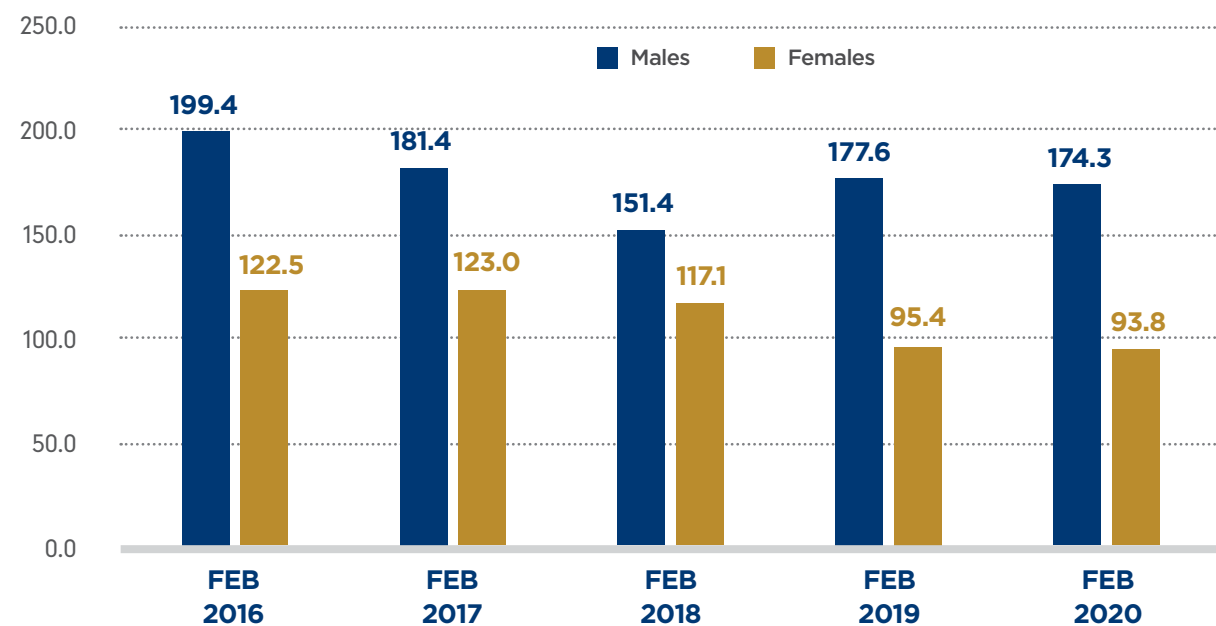
TABLE 2.3
NUMBER OF RETRENCHED EMPLOYEES,
5 YEARS LEADING TO COVID-19
IN FEBRUARY 2020.

	TOTAL 5 YEAR RETRENCHMENT
Males	884,100
Females	551,800
Total	1,435,900
As % of 2020 workforce	11.06



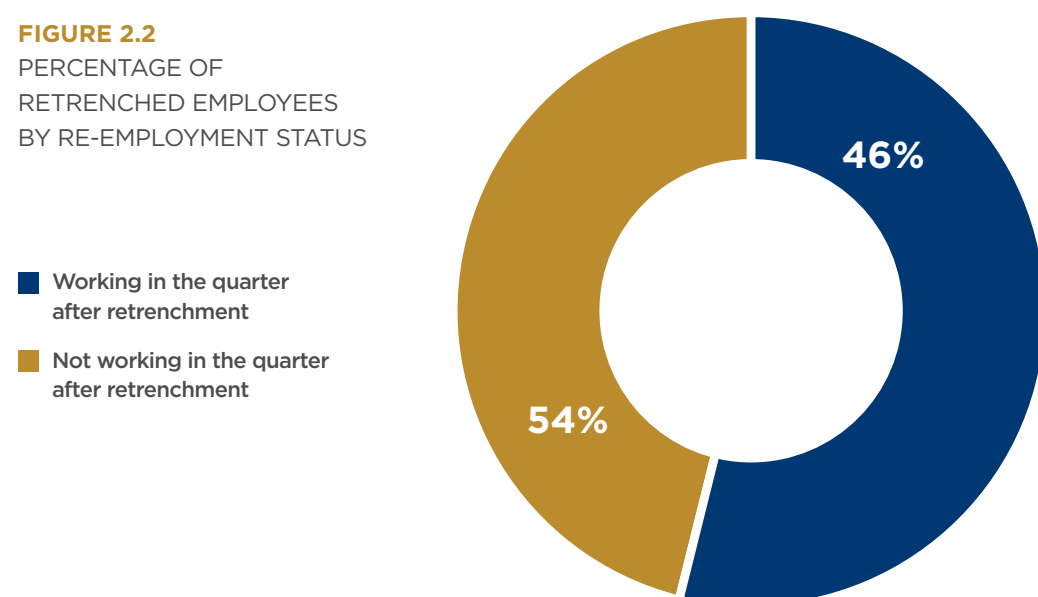
Male workers typically experience retrenchment more often than female workers. Over the five year period, 884,100 male workers were retrenched, whereas 551,800 female workers were retrenched. In total, 1.45 million Australian workers faced retrenchment between February 2016 and 2020.

FIGURE 2.1 ANNUAL RETRENCHMENTS, 2016-2020



Source: ABS.

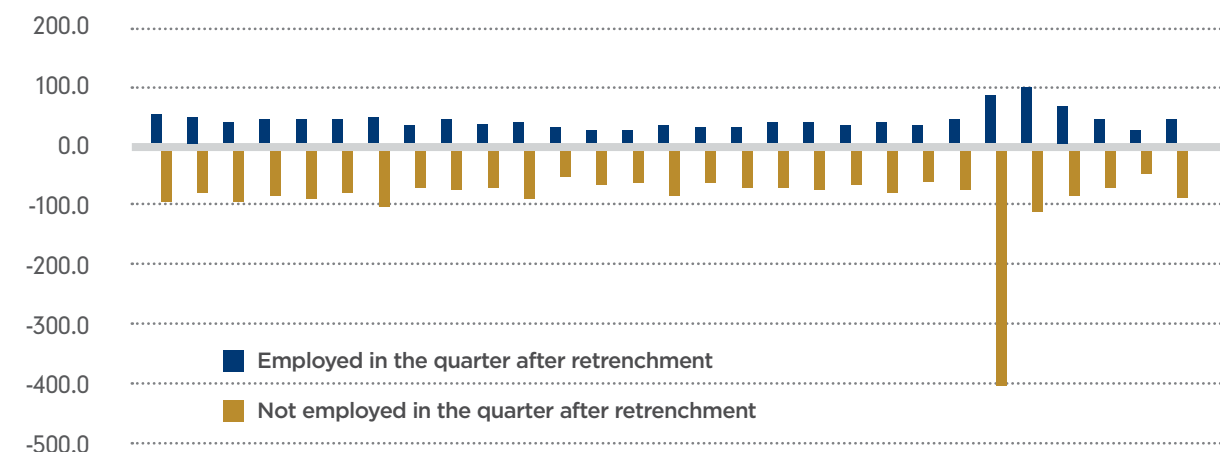
FIGURE 2.2
PERCENTAGE OF
RETRENCHED EMPLOYEES
BY RE-EMPLOYMENT STATUS



Source: ABS.

FIGURE 2.3

NUMBER OF RETRENCHED WORKERS BY RE-EMPLOYMENT STATUS
THE QUARTER AFTER THEIR DISMISSAL, 2014-2021.

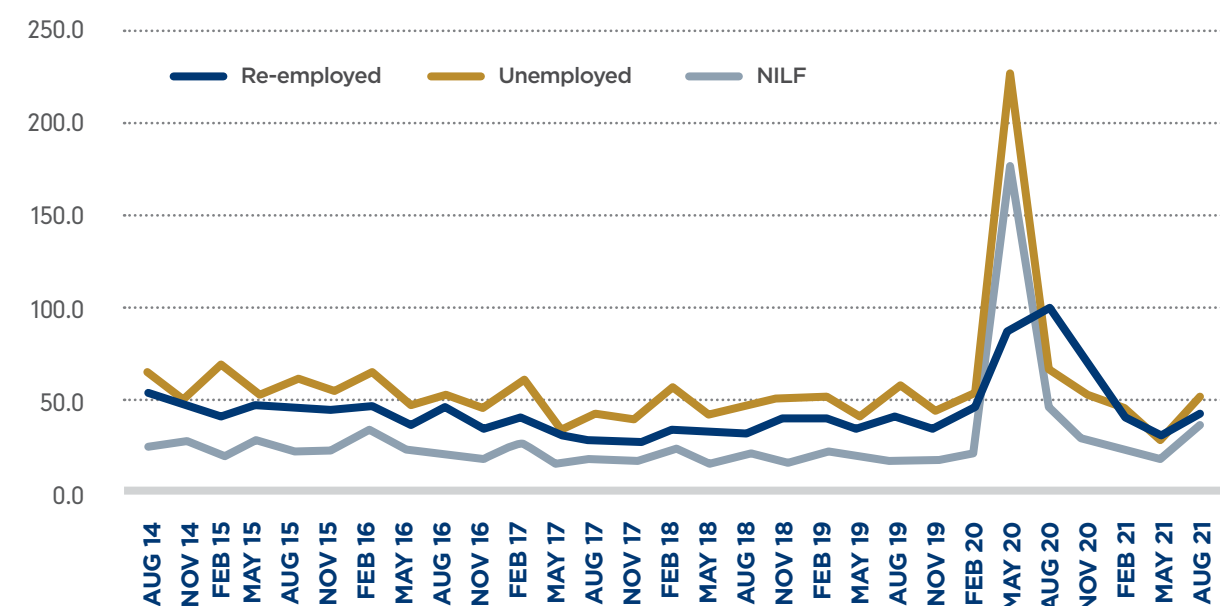


Source: ABS.

Alarming, a majority of workers who are retrenched do not quickly return to the workforce. As *Figure 2.2* demonstrates, 54 per cent of retrenched workers were not employed the quarter after their dismissal. *Figures 2.3* and *2.4* show that, consistently, more dismissed workers are unemployed the quarter after their dismissal than those who find work again. Many of these individuals will not have adequate redundancy compensation, and are therefore pushed towards a deeply inadequate income support system instead of work.

FIGURE 2.4

NUMBER OF RETRENCHED WORKERS ('000) BY RE-EMPLOYMENT STATUS
THE QUARTER AFTER THEIR DISMISSAL, 2014-2021



Source: ABS.

Redundancy can be used discriminately, including against pregnant women

There is also evidence that redundancy provisions are being disproportionately, and often discriminately, used against pregnant women, or women returning to the workforce with young children. A major 2014 survey by the Human Rights Commission of over 2000 mothers identified routine workplace discrimination faced by women either seeking time maternity leave, or returning to work as new mothers.

49 per cent of this cohort stated that during their pregnancy, or in the months after, they had been discriminated against. Of that cohort, 36 per cent said that they experienced ‘dismissal, redundancy or job loss’ during pregnancy, with a further 8 per cent saying they were threatened with these outcomes. For those requesting parental leave, or new mothers returning to the workforce, the data suggests a similar misuse of redundancy. Among this second cohort, 29 per cent of respondents said they experienced ‘dismissal, redundancy, or job loss’, while 6 per cent were threatened with these outcomes. These data demonstrate that capacity for redundancy to be misused in a contemporary workplace context.

FIGURE 2.5 TYPES OF WORKPLACE DISCRIMINATION FACE BY AUSTRALIAN WOMEN DURING PREGNANCY, PERCENTAGE.

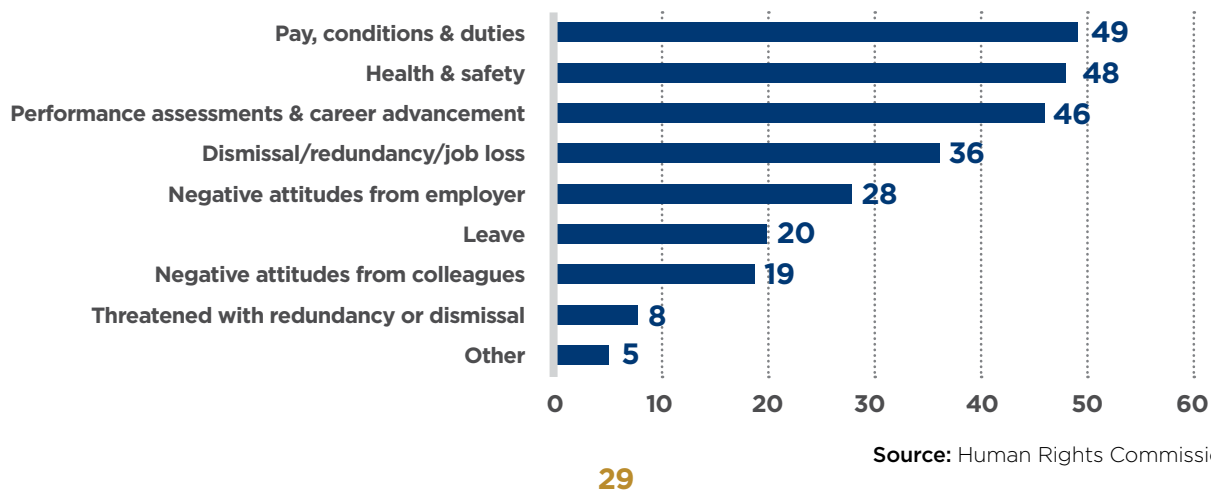
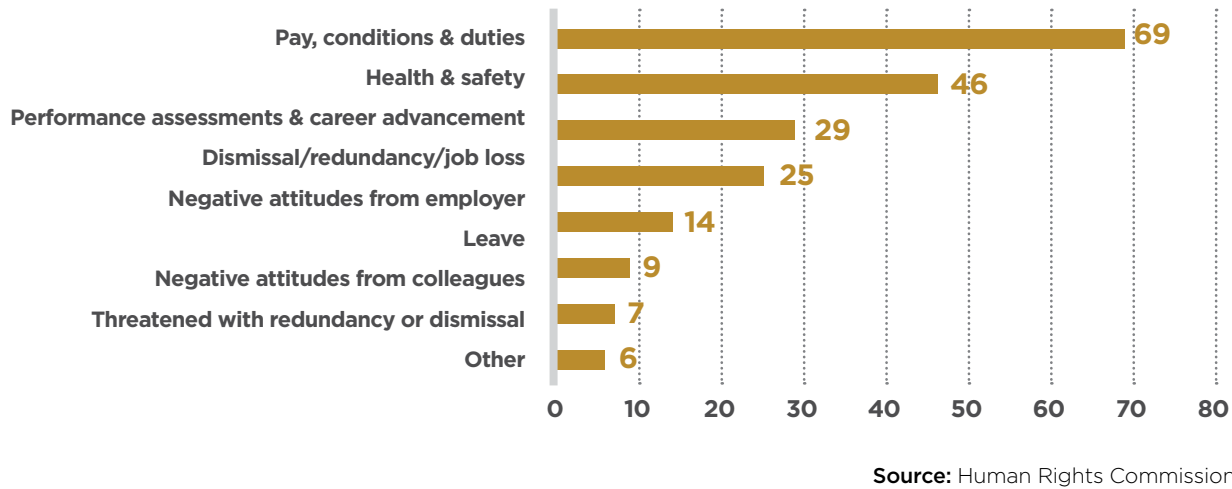


FIGURE 2.6 TYPES OF WORKPLACE DISCRIMINATION FACED BY WOMEN REQUESTING PARENTAL LEAVE, PERCENTAGE.



2.4: Redundancy doesn't recognise the mobility of the modern workforce

Australian employees who have worked at least one year of continuous service are entitled to redundancy pay. The maximum period of redundancy pay is 16 weeks, while individual awards and enterprise bargaining agreements may provide for higher amounts of redundancy pay for some workers.²³

Although some workers have access to 16 weeks of redundancy pay, most workers who are retrenched and eligible for redundancy in fact receive much less than 8 weeks redundancy pay.²⁴ As the labour market has become less secure and more mobile, the tenure of individual workers' employment with single employers is becoming shorter (see Figure 2.7).

TABLE 2.4 MINIMUM STANDARDS FOR REDUNDANCY PAYOUT

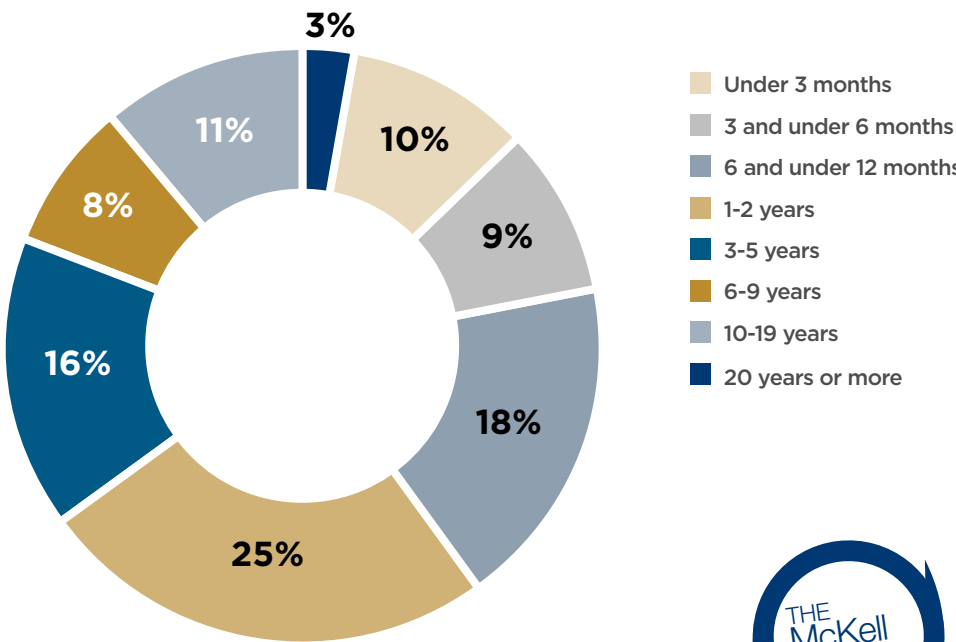
PERIOD OF CONTINUOUS SERVICE	REDUNDANCY PAY
At least 1 year but less than 2 years	4 weeks
At least 2 years but less than 3 years	6 weeks
At least 3 years but less than 4 years	7 weeks
At least 4 years but less than 5 years	8 weeks
At least 5 years but less than 6 years	10 weeks
At least 6 years but less than 7 years	11 weeks
At least 7 years but less than 8 years	13 weeks
At least 8 years but less than 9 years	14 weeks
At least 9 years but less than 10 years	16 weeks
At least 10 years	16 weeks*

Source: Fair Work Act

Most retrenched workers have only worked for brief periods before with their employer

FIGURE 2.7 BREAKDOWN OF RETRENCHMENTS BY TIME SPENT IN JOB PRIOR TO RETRENCHMENT.

Source: ABS





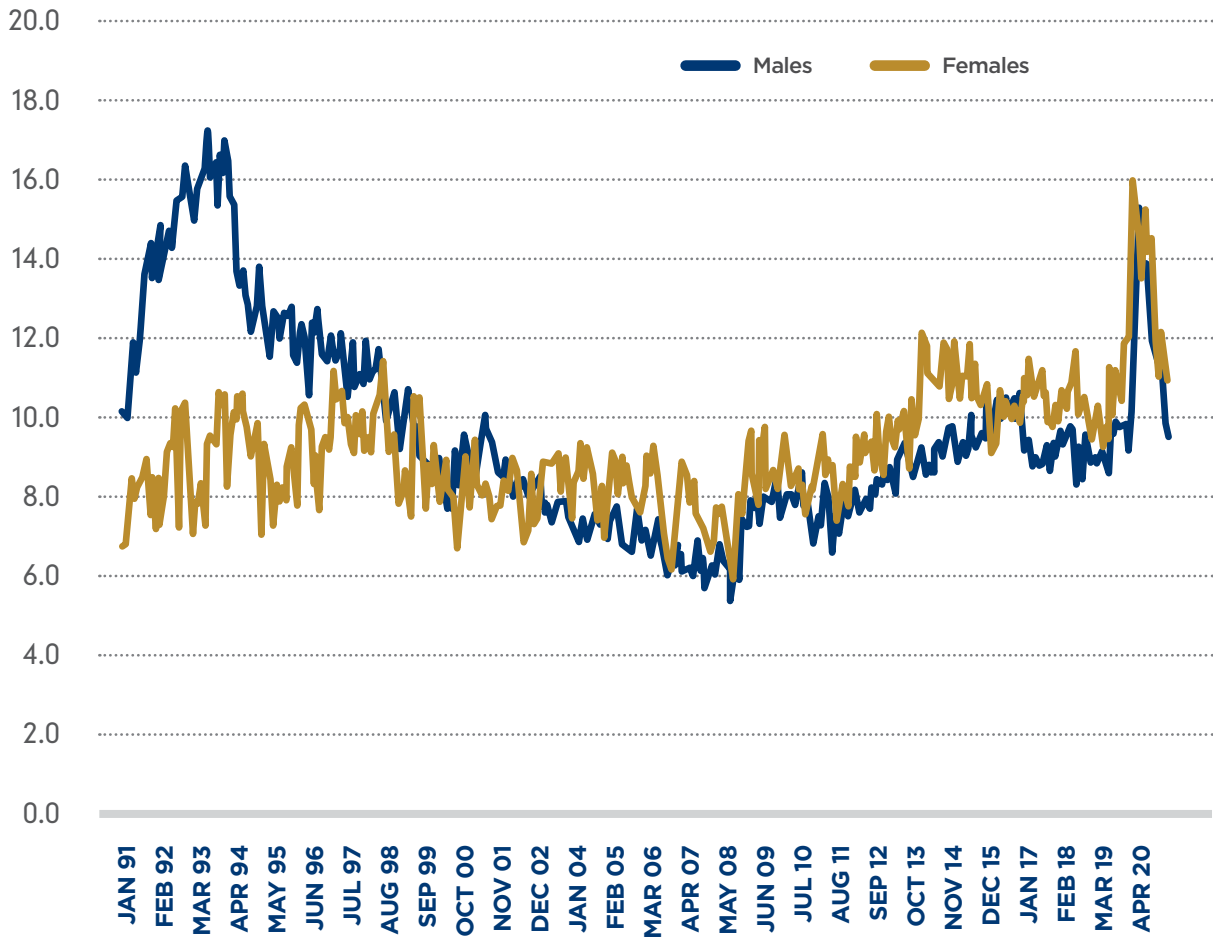
While redundancy provides for *up to* 16 weeks of pay for a retrenched worker, in reality redundancy payouts of this size are rare. In data collated between 2016 and 2020, just 13 per cent of retrenched workers had been with their employer for 10 years or more.

An overwhelming majority (78 per cent) of those facing retrenchment in Australia do so having worked less than five years in their job. The largest cohort of retrenched workers are those who have worked in that position for between one and two years. Only 14 per cent of all retrenched workers have been working in that

position long enough to receive the full benefits associated with redundancy, if they're eligible.

For workers attempting to re-enter the workforce after redundancy, the high underutilisation rate, which represents a sustained slack in the labour market, makes it challenging. This is particularly the case for older workers. There has been a sustained increase in the underutilisation rate for all workers aged 55 and over since the Global Financial Crisis (*Figure 2.8*), which highlights that this dynamic pre-dated the COVID-19 shock.

FIGURE 2.8
UNDERUTILISATION RATES FOR MALE AND FEMALE WORKERS
AGED 55 AND OVER SINCE THE EARLY 1990S RECESSION.



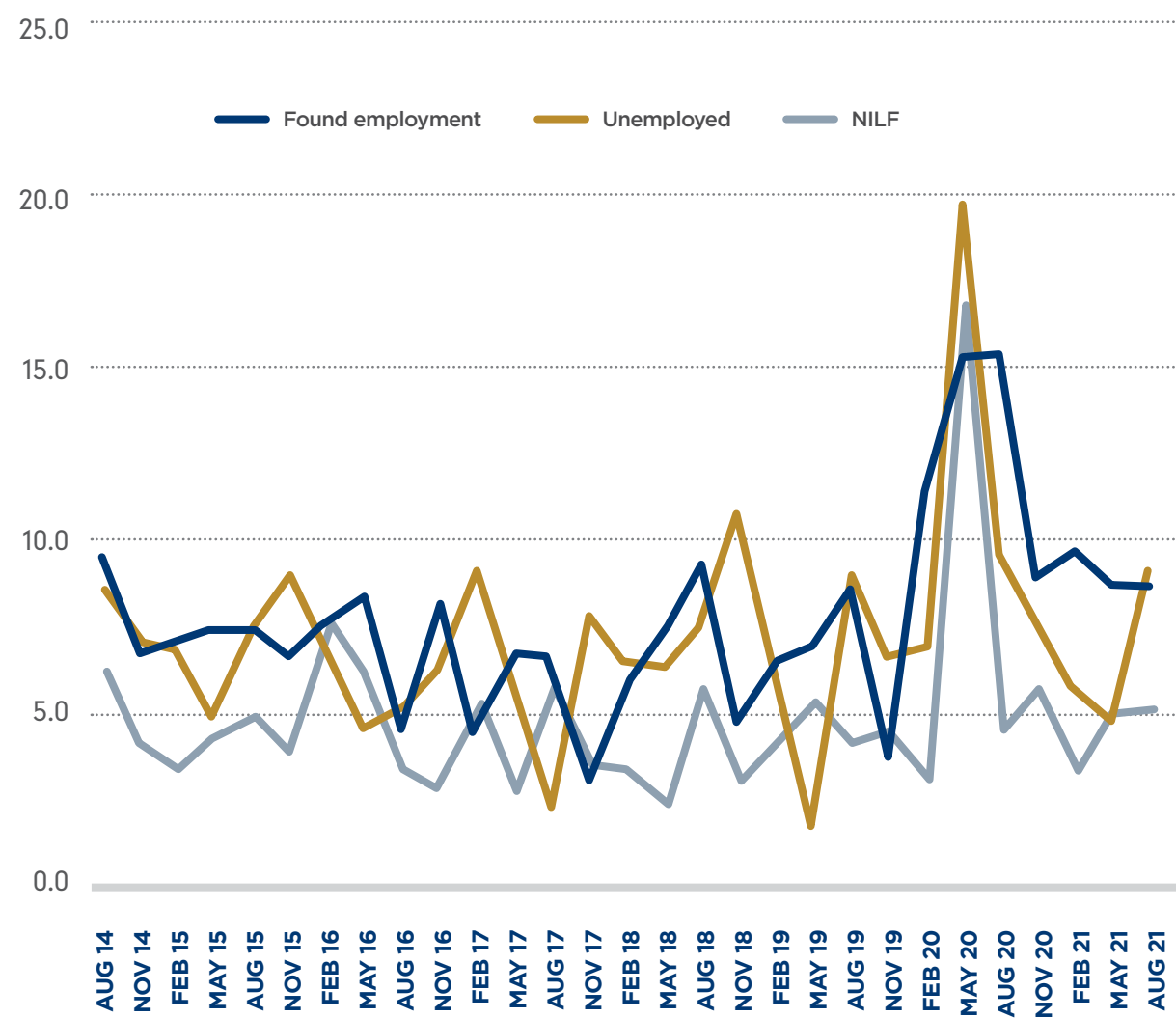
Source: Human Rights Commission.

Retrenched workers aged over 45 are finding it harder to re-enter the workforce

Workers in older cohorts who find themselves retrenched are finding it harder to re-enter the workforce than in previous periods. In 2001, just over 2 per cent of workers aged over 55 who were categorised as 'not in the labour force (NILF)' were actively looking for work in the next four weeks, whereas by 2021, this had climbed to 8 per cent. Even prior to the COVID economic shock, this rate exceeded 7 per cent. The same dynamic, though slightly less severe, is occurring with workers aged over 45.

As Figures 2.9, 2.10 and 2.11 illustrate how the COVID-19 economic shock furthered these trends.

FIGURE 2.9
RETRENCHED WORKERS AGED 55 AND OVER BY RE-EMPLOYMENT STATUS ('000), 2014-2021



Source: ABS

FIGURE 2.10
PERCENTAGE OF 55-64 YEAR OLDS 'NOT IN LABOUR FORCE' BUT LOOKING FOR WORK, 2001-2021

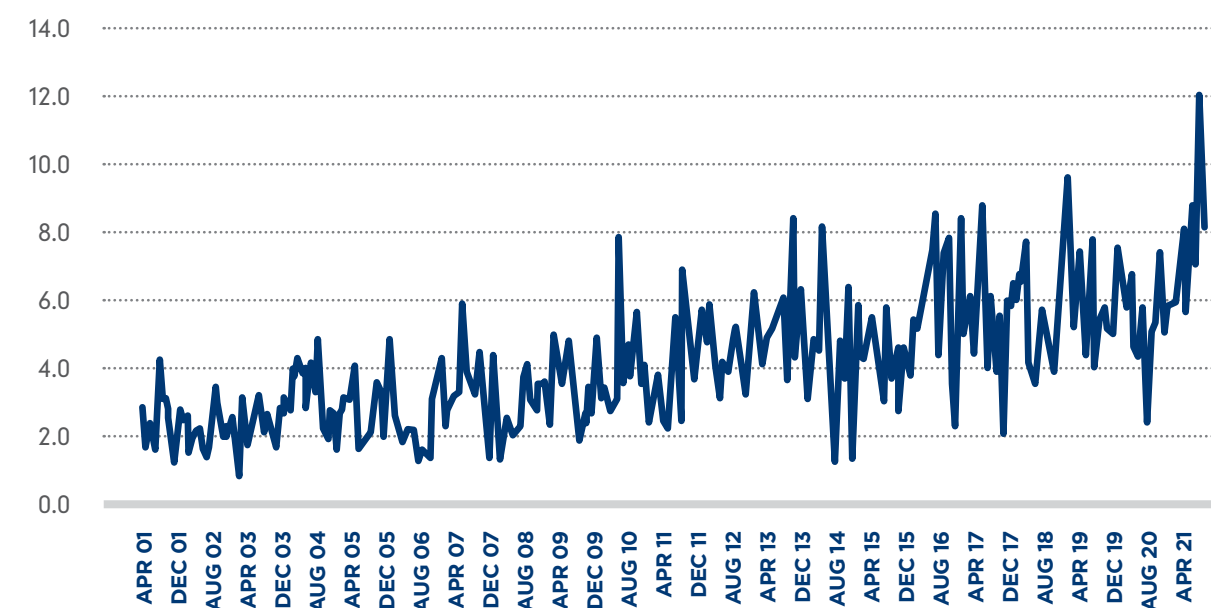
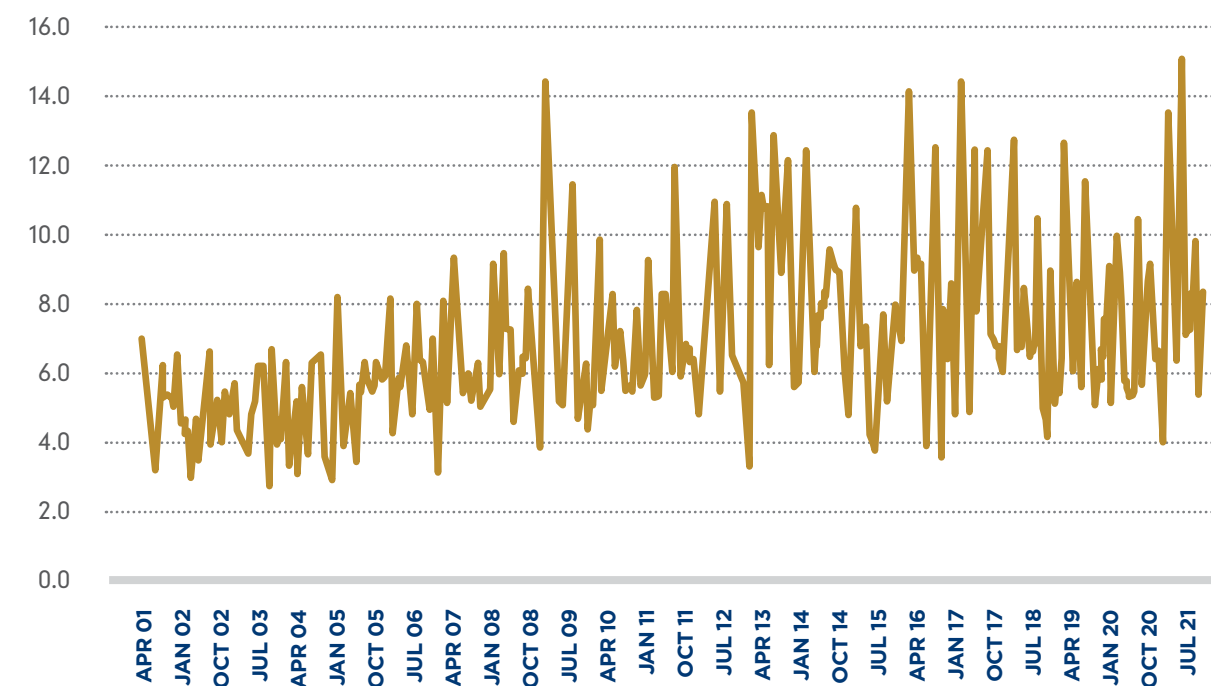


FIGURE 2.11
PERCENTAGE OF 45-54 YEAR OLDS 'NOT IN LABOUR FORCE' BUT LOOKING FOR WORK, 2001-2021



2.5: Redundancy coverage is low, and retraining doesn’t always work

Contractors, casuals and gig workers miss out

As with many basic workplace entitlements, Australia’s current redundancy framework is limited to common law ‘employees’, and not any ‘independent contractors’.²⁵ Further, it does not apply to casual employees, or employees on fixed-term contracts. As Part One identifies, these forms of work are becoming more common. This means that an increasing number of Australians are not able to access Australia’s existing redundancy framework, and are left in an even more vulnerable position.

Re-training programs often aren’t currently sufficient to offset poor redundancy provisions

There are certain re-skilling initiatives by the Commonwealth and state governments that are designed to facilitate a pathway to re-employment for those seeking work after retrenchment. Others are geared towards

finding work for younger Australians. *JobTrainer* is a program run by the Australian Government and the state governments to provide subsidised upskilling training for young (17-24) and unemployed Australians. *JobTrainer* offers to fund 300,000 places and include short courses for in-demand jobs in areas such as health, IT, aged care and trades. Additional *JobTrainer* initiatives have been conducted on a state level. NSW included an upskilling program across summer 2020-2021 for school leavers. QLD expanded the eligibility criteria to include any person not currently enrolled in a training or higher education program.

The *Skills Checkpoint Program* (SCP) is an initiative to assist Australians aged 45 to 70 who are either unemployed or at risk of redundancy. Eligible participants are able to receive \$2,200 from the Federal Government to fund upskilling or reskilling. Unlike the *JobTrainer* program, the SCP is only awarded as a matched contribution to personal or employer funding. Separate state-level initiatives also exist. These are summarised in Table 2.5:

TABLE 2.5 STATE TRAINING INITIATIVES

	PROGRAM NAME	DESCRIPTION
NSW	Smart and Skilled ²⁶	Provides access to subsidized professional certificates across four levels. Also provides additional subsidies for higher level courses in industries of high demand.
VIC	Reconnect 2021 ²⁷	Supporting over 1,600 participants in education and retraining. The program provides counselling and mentoring, housing and accommodation services referral, mental health support referral, foundation and employability skills, and careers services and planning advice. Eligible participants include young people (17- 19 years) not engaged in education or training or on Justice Orders, mature participants (20-64 years) unemployed for six months or more, and asylum seekers.
QLD ²⁸	Certificate 3 Guarantee, Free TAFE for Under 25s	Partial or full subsidies for training and certification in vocational industries. Higher subsidies based on financial needs and high-demand industries.
	User Choice, Free Apprenticeships for Under 25s	Partial or full subsidies for training of Queenslanders.
	Skilling Queenslanders for Work	\$80 million to provide skills training and jobs to 10,000 disadvantaged Queenslanders in 2020-2021. Includes provision of nationally recognised certificates, traineeships and more.
	Back to Work	\$20,000 support for employers to take on unemployed jobseekers in disadvantaged regions.
WA	Job Ready Pathways ²⁹	Free training programs for students under 25 and eligible jobseekers. Includes industry work placement in aged and disability care, bricklaying, and civil construction.
	Lower Fees, Local Skills ³⁰	Half priced course fees for diplomas in community services and mental health services (2020). Expanded in 2021 to include environmental conservation courses. \$57 million spending on subsidized fees across a total of 360+ qualifications (up to 72% fee cut), expanded to include professional services, livestock, allied health, retail, trades, engineering and more.
NT	Skilling Territorians ³¹	Subsidised training through a range of programs and initiatives. \$100 m in funding across apprenticeships, higher education certificates and training, including \$8m focused on “Targeted and Responsive” programs providing services for identified skills needs and employment opportunities. Focused on skills relevant to agribusiness, tourism, energy and mineral, education and training, defense and support.
SA	Skilling South Australia ³²	\$100 million to subsidise over 20,000 apprenticeships over four years. Industries include defense and shipbuilding, healthcare and community centres, agribusiness, high-tech industries. Reduced barriers to hiring, statewide advisory service for new hires.
TAS	Skills Tasmania ³³	Eligible jobseekers able to access a \$3,000 subsidy for training from any provider or for work and safety gear. The program also provides career and employment advice.
ACT ^{34,35}	Adult Community Education (ACE), Future Skills for Future Jobs (FSFJ)	Subsidising NFPs (ACE) and private organisations (FSFJ) to promote job-creating projects for unemployed Australians and immigrants. \$50,000 per project (ACE), \$300,000 per project (FSFJ)
	Mature Workers	Funding to support projects targeting mature workers seeking work. \$500,000 per project over 2-3 years.
	Skilled Capital	Subsidised and free TAFE for high-demand skills (including food handling, agribusiness, cyber security, nursing, surveying)

Source: Various.



In 2019, only 15 per cent of low-skilled Australians participated in training programs. This compares to 48 per cent of average-skilled Australians.³⁶ Australia also ranked 27th out of 34 OECD countries across a measure of ease of access to skilling initiatives, as well as case-flexibility of retraining initiatives.³⁷

State level policies broadly cover direct subsidies or co-contribution commitments for certificates and licenses in high-demand industries. Industries commonly included are agribusiness, trades, and allied health. State governments such as WA have included some industries as a part of other policy initiatives linked to public spending on asset management or development.

Digital skills are infrequently mentioned in retraining subsidies, despite the acknowledgement of long-term future growth. These industries must be included if workers are to have confidence that the skills, they are investing in will enable them to access life-long careers and avoid future redundancies.

This patchwork of reskilling programs is important. However, there is no substitute for retaining, where possible, and employees relationship with their existing employer, or enabling that worker to retrain with their employer in lieu of their retrenchment.



CASE STUDY

Warehouse workers at a produce and recycling warehouse in Victoria

In 2018 a major supermarket chain announced the closure of its produce and recycling warehouse at Mulgrave in Victoria.

The site had been in operation for nearly 40 years before it closed. The average age of the affected employees was 48 years. Approximately 150 directly employed permanent employees were made redundant when the site finally closed in the first half of 2021.

Employees were offered employment in the replacement site, but as it is on the other side of Melbourne few took up the offer of redeployment. Those that did take up redeployment received a part package.

The new site is a more modern and efficient warehouse that employs more employees, at least half of whom will be offered permanent employment. The employer aims to have more than 50 per cent of the warehouse's workforce permanent going forward.

Some employees were able to take redundancy earlier due to their age, some by agreement could also leave early and take the package. The company was happy to work with the SDA to facilitate these to happen. It also allowed the site to have a gradual wind down which helped the business transition to the new site.

WELL-NEGOTIATED REDUNDANCY PACKAGE WAS ESSENTIAL – BUT EXTENDED WELL BEYOND THE LEGAL MINIMUM STANDARDS FOR REDUNDANCY PACKAGES.

Workers who were made redundant were offered a package that had been negotiated by their union.

The maximum redundancy payout for permanent employees was 82 weeks. It was based on 5 weeks per year of service, with additional weeks after 10 years of service, to a maximum of 82 weeks. This included any applicable shift penalties. For permanents with more than 3 years' service, unused personal leave was also paid out. This included the payment of any applicable shift penalty.

Directly employed casuals received a closure payment of \$1,000 per completed year of service up to a maximum payment of \$5,000. \$3,000 per employee was available for further retaining to enable the employees being made redundant to upskill. Many had been at the site for over 20 years and had worked manual jobs for most of their working lives. They therefore sought to upskill themselves to be able to re-enter a more diverse workforce.

After the announcement of the site closure, the SDA had further discussions with the company about the redundancy payouts. This led to an additional \$750 per year payment or part thereof being added to the existing redundancy payments for permanents. Also it was agreed that long service leave was paid out on average pay.

MANY EMPLOYEES MADE REDUNDANT SHIFTED INTO LESS SECURE WORK

Of the 150 employees made redundant;

- 40 per cent went into labour hire, working from site to site
- 15 per cent started their own business
- 15 per cent went into full time permanent positions
- 10 per cent are working casually (not labour hire) of 2 to 3 days per week
- 10 per cent have decided due to age or health to not seek further work.

This demonstrates that, while a majority of redundant workers found employment again, they did so in more insecure positions. This case has demonstrated that workers who do face redundancy often struggle to find secure work again. For these workers, robust redundancy support mechanisms are essential to provide a buffer against the worst impacts of job loss.

PART THREE: RESHAPING REDUNDANCY

KEY POINTS

- 1 The current redundancy framework is insufficient, and ill-suited to the increasingly disruptive nature of the modern economy.
- 2 Redundancy reform is one of the most direct levers government can pull to help ameliorate the worst impacts of automation-led job losses, while still embracing the productivity-enhancing benefits of innovation.
- 3 To make redundancy work in this age of automation, the Commonwealth should consider reforms that provide more compensation for retrenched workers, expand the pool of workers eligible for redundancy, identify ways of utilising redundancy provisions to create more reskilling opportunities for displaced workers, and ultimately direct a modest portion of automation-associated profits into investments in Australia's human capital.



3.1: Reshaping redundancy for an age of automation

This report makes six recommendations aimed at improving Australia’s current redundancy framework.

RECOMMENDATION 1

Harmonise the definition of ‘redundancy’ in the Fair Work Act, creating distinctions between ‘economic dismissal’ and ‘automation-induced retrenchment’

Policymakers should consider, as a response to an increase in automation, amending the Fair Work Act so that ‘automation-related’ redundancy is recognised, and that workers who experience job loss due to their role being replaced by technology are offered a credible pathway to re-employment by employers engaging in ‘automation-induced’ redundancy.

RECOMMENDATION 2

Formalise medium and large firms’ responsibility to retrain a worker as a condition of ‘automation-induced’ redundancy being considered ‘genuine’

For a redundancy to be deemed ‘genuine’ – which ensures an employer will avoid an unfair dismissal action – a firm has to demonstrate that it has worked to redeploy a redundant worker elsewhere in the firm. This is currently challenging to enforce, however, given the limited timeframes in which redundant workers can protest their dismissal.

Given this, there is a considerable risk that, as automation increasingly displaces individuals from certain job functions, the individuals will not be given sufficient retraining enabling them to redeploy to another role within their firm, or their industry.

Strengthening the protections for workers facing redundancy would not prohibit businesses from engaging in the legitimate and sometimes necessary process of ‘genuine redundancy’. It would, however, make it more challenging for firms to exploit the relatively broad nature of Australia’s redundancy framework as a means of minimising labour costs, and place a greater onus on the employer to be able to demonstrate to the Fair Work Commission that it has genuinely attempted to place its soon-to-be-retrenched worker(s) on a legitimate and funded pathway towards re-employment.

The requirement would be specific larger firms, as is currently the case with existing redundancy provisions, and could require distinct obligations if an employer is engaging in ‘automation-induced’ dismissal. If a business was genuinely unable to redeploy, retrain and then rehire an employee, such a scheme would request that the reasons for this are documented, which would create an evidence base upon which the redundancy can be deemed ‘genuine’.

TABLE 3.1 A PROPOSED CHECKLIST FOR A GENUINE ‘AUTOMATED INDUCED’ REDUNDANCY.

STEP 1	RE-DEPLOY	The firm should be able to demonstrate a genuine attempt to redeploy the worker elsewhere in the business without offering significantly worse pay and conditions than the employer was receiving previously.
STEP 2	RE-TRAIN	If the employee is ill-suited to available roles within the firm, the firm should be able to demonstrate it has offered to retrain and upskill the worker, either utilising in-house skills development capacity, or contributing funding for employee-managed skills development. This phase could be co-funded by the Commonwealth, building upon the existing Skills Checkpoint Program.
STEP 3	RE-HIRE	If the firm has funded the retraining of the worker, the firm should be able to demonstrate it has made an attempt to rehire the employee.
STEP 4	RETRENCH	If the business is genuinely unable to identify a role for the worker within the firm, or if the employee themselves opts for redundancy instead of Steps 1-3, then the firm can proceed with the final step in the redundancy process.

RECOMMENDATION 3

Extend the time period in which employees’ have the right to lodge an unfair dismissal claim from 21 days to 60 days when made redundant

Currently, retrenched workers in Australia are given 21 calendar days from the point of dismissal to lodge an unfair dismissal claim.³⁹ This is a brief window which may prohibit limit a dismissed employee from contesting a non-genuine redundancy, given the multitude of pressures the individual faces when made redundant.

It also creates an asymmetry of information between employers, and employees. An employer will be aware, prior to the 21-day period, that a dismissal is to take place, giving them the time to prepare and mitigate against any prospective unfair dismissal claim. The employee has no such luxury, and has to consider their options during a small window of time. This reflects an acute power imbalance between employee and employer, and should be addressed.

RECOMMENDATION 4

Raise the floor of minimum redundancy payments, so that all workers made genuinely redundant are eligible for redundancy after six months’ service, and most workers receive a minimum of 8 weeks redundancy pay if made genuinely redundant

Redundancy pay is currently inadequate for the vast majority of Australian workers who find themselves facing retrenchment. This report has established that just 13 per cent of workers who face retrenchment are eligible for the maximum redundancy payout of 16 weeks’ pay.

The sliding scale of redundancy payouts currently incentivises firms to make positions redundant early in the period an individual has been working with the firm, as the shorter the term of employment the less financial liability the firm has with respect to that individual’s redundancy.

It also favours employer flexibility over employee flexibility – incentivising employers to dismiss workers earlier in their tenure, but incentivising employees to remain employed by a single employer for as long as possible. Essentially, it rewards employers for engaging workers for shorter period of time, and punishes employees for seeking new opportunities within the first few years of their employment.

Further, the nature of Australia’s modern jobs market is such that most workers will no longer remain with a single employer for more than 9 years – the period of continuous service required to receive the maximum 16 weeks’ redundancy pay. Given the increasingly dynamic and mobile nature of the labour market, a flatter redundancy payment structure should be considered, with a minimum of 8 weeks’ redundancy pay offered to most eligible workers who are retrenched.

TABLE 3.2 THE PROPOSED INCREASED FLOOR IN REDUNDANCY PAYMENTS COMPARED WITH EXISTING MINIMUM STANDARDS.

Employee’s period of continuous service with the employer on termination	Weeks redundancy payment: Status quo	Weeks redundancy payment: proposal
Less than 6 months	0	0
At least 6 months but less than 1 year	0	2
At least 1 year but less than 2 years	4	6
At least 2 years but less than 3 years	6	8
At least 3 years but less than 4 years	7	8
At least 4 years but less than 5 years	8	8
At least 5 years but less than 6 years	10	10
At least 6 years but less than 7 years	11	12
At least 7 years but less than 8 years	13	13
At least 8 years but less than 9 years	14	14
At least 9 years but less than 10 years	16	16
At least 10 years	16	16



RECOMMENDATION 5

Expand the eligibility for redundancy to include casuals, contractors and employees sourced through labour-hire who can demonstrate regular hours of employment with the primary employer

Over twenty per cent of the Australian workforce does not have paid leave entitlements. Despite being on the frontline of Australia's changing jobs market, these workers are typically ineligible for redundancy. Instead, this large cohort of the workforce is nudged towards the income support system, and programs such as *JobActive*, as opposed to being offered genuine pathways towards re-employment with their current employer or another employer within their industry. Lawmakers should examine how a reshaped redundancy framework could provide the benefits of redundancy to this insecure segment of the labour market. Additionally, service with an employer should be considered continual, even when workers have been re-employed through a third party labour-hire firm, if a consistent relationship with the primary employer is demonstrable.

RECOMMENDATION 6

Explore long-term legislative approaches to capture a small portion of the productivity-induced excess profits from automation, hypothecating any future revenue into a national training and reskilling 'future fund'.

In the longer term, the ever increasing integration of automated technology in workplaces will test Australian policymakers. Although 'robots' will not take everyone's jobs, the risk of an expedited integration of job-replacing technologies in key growth sectors of Australia's economy, such as the services sector, should at least inspire policymakers to consider safety-net policies that ameliorate the impact of any worst case scenarios.

Taxes on automation, or taxes on the profitability associated with automation, are challenging to design, implement and enforce. But ultimately, they may be required to raise sufficient revenue to retrain and reskill workers who are otherwise left behind by the pace of change. It is important that any consideration of such a tax should not stand in the way of more immediate reform options, such as those advanced in this report.



CONCLUSION

The Australian workplace is changing, and this transformation will continue as the global economy embraces new technologies. This change is not something to fear: new technology and automated job functions can make work safer and more productive.

However while automation and technological transformation enables new opportunities and efficiencies, it must also inspire policymakers to re-examine existing safety nets to ensure workers are protected, and skilled to meet the evolving demands of the economy.

This report has outlined the case for reshaping Australia's redundancy framework to ensure it is appropriately suited to this age of disruption. It outlines how Australia's current redundancy framework, while providing some support, is often inadequate, open to misuse, and fails to recognise the challenge to employment caused by automation.

So too is it poorly targeted, with only permanent employees with long tenures of continuous service benefiting significantly from the system. This model is becoming increasingly outdated.

Ultimately, this report has advanced recommendations aimed at strengthening this essential economic safety net, ensuring that Australian workers who are displaced by automation have a more viable pathway to reemployment, but that the necessary innovations required to increase Australia's economic productivity continue.



FOOTNOTES

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