



Fair Work
Commission

Modern Awards Review 2023-24 (AM2023/21)

Submission cover sheet

Name:

Gerard Dwyer National Secretary SDA

Organisation:

Shop Distributive and Allied Employees' Association

Address:

Street Address 1: Level 6

Street Address 2: 53 Queen Street

Suburb/City: Melbourne

Postcode: 3000

Contact details:

(Please provide details of your preferred contact telephone number and/or email address)

Telephone: 03 8611 7000

Email: sue-anne@sda.org.au; henry@sda.org.au

Modern Award Review Stream:

Arts and Culture:

Job Security:

Work and Care:

Usability of awards:

Modern Awards Review 2023-24

AM2023/21

Job Security

SDA SUBMISSION

Date Submitted: 5 February 2024

Submitted by: Gerard Dwyer
National Secretary-Treasurer



Introduction

1. The Shop Distributive and Allied Employees' Association (**SDA**) is providing this submission to the Fair Work Commission (**FWC**) as part of a response to the FWC Modern Awards Review 2023-24 (**Awards Review**).
2. The SDA is one of Australia's largest trade unions with some 210,000 members working in a broad range of areas including retail, warehousing, online retailing, fast-food, hairdressing, beauty, pharmacy and modelling.
3. The majority of SDA members are low income, with 60% being women. Retail and food services are two of the three lowest industries for median weekly earnings. The retail industry employs one of the largest proportions of Australian workers, accounting for approximately 10% of the nation's workforce.
4. On the 18th December 2023 FWC issued a Discussion Paper: Job Security (**Discussion paper**) which was to be the starting point for discussion with interested parties. FWC invited submissions to be made answering a series of questions.
5. This submission of the SDA is intended to be a first step in the discussion and consultation process, answering the questions posed in the discussion paper, raising issues and identifying key concerns that our members have regarding the interaction of Job Security, Modern Awards and the Fair Work Act (**FW Act**).
6. This submission begins with a discussion about the Job Security Issue and provides some views from workers in retail and fast food. It then deals with the questions posed in the Discussion paper.

The Issue

7. THE FW Act was amended¹ to include provisions directing that consideration of job security was to be a specific requirement. These new provisions were included as an Object of the Act at s3(a) to 'promote job security' and also in s134(1)(aa) Modern Award Objective 'the need to improve access to secure work across the economy'.
8. Job security can take many forms and has many aspects which the Discussion paper identifies:

[56] Ultimately, job security is a multi-faceted concept with no single definition. The international and domestic literature identifies a variety of indicators of job security and insecurity. As might be expected, in many instances *secure* work can be defined by the same indicators that *insecure* work lacks. In summary, some of the commonly understood indicators of insecure work include:

- low, unpredictable or irregular income;
- irregular, fragmented and/or unpredictable hours;
- limited access or lack of access to paid leave, redundancy and other entitlements;
- poor and/or limited security of tenure;
- uncertainty around hours or duration of employment;
- social and/or physical isolation; and
- low worker control.

[57] The common thread across these different dimensions appears to be the lack of certainty and control experienced by workers in relation to the circumstances of their employment. In an even broader sense, job insecurity has been described as any form of uncertainty surrounding employment that reduces wellbeing.⁵⁷

9. In recent externally conducted survey work of retail and fast food workers², there were comments made by workers that encompassed the indicators of insecure work or lack of 'security'.
10. Below are some examples of the comments provided in the survey to various questions about work which resulted in some strong comments about rostering and the lack of control employees experience. The comments encapsulate a variety of the various issues the Discussion paper raises and the questions posed.
 - a) *Our roster is meant to be done for 6 weeks ahead and we are lucky to have it done 1-2 weeks ahead. Our shifts change all the time and we don't know what we are*

¹ Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022

² Cortis N, Blaxland M and Charlesworth S (2021) 'Challenges of work, family and care for Australia's retail, online retail, warehousing and fast food workers'. . Social Policy Research Centre, UNSW Sydney.

working from month to month. We used to all have set days and times and you could book appointments in advance on times you weren't working but now I have had to use up my annual leave if I need time off and I am working. I have asked to have Tuesday mornings off and was told no she won't change the roster for me because it is not all about me she said! Female aged 40 -55, large retailer

- b) Not always fair. I can't work past a certain time on Thursday's and am always rostered after that time (I'm really flexible every other day) Never had consistent shifts
Female aged 25/U large Retailer*
- c) The roster is varied. Early starts. Late finishes. Rotating roster. Makes it very hard to have a balanced home life
Female Aged 40 -55 large retailer*
- d) After having worked for a large retailer for just over a year, I suddenly lost all my weekend hours, and Sundays was the day I most preferred working, as the penalty rates meant I received a decent pay packet each week. I have lost about \$200/week because of that change. The retailer also expects all casual & part time staff to make ourselves available to work other shifts at short notice, meaning planning activities outside work can be difficult. For example I have not been able to attend a volunteer position I really enjoy doing because my roster keeps changing and I am unable to commit to the volunteer role while also fitting in the rest of my life, like domestic duties etc. Male Over 55 years Large retailer*
- e) Changes made without being asked or told, have been in trouble for not showing up to a shift I didn't know I had. Female Aged 26-40 Large retailer*
- f) Had to take a reduction in my hours as I was offered hours late in the evening and I cannot do due to distance from work to home. Can't drive in night due to bad eye sight. In need of 30 hours per week, which they will not provide. Was on 35 hours per week now on 26. Female over 55yrs Large retailer*
- g) I am a full time worker with specific contracted hours and sometimes they change my shift without asking me and expect me to do it without the option of asking me if I am available to change or just common courtesy to my personal life and etc. Female Large retailer*
- h) In my contract it says I have to do one night per week and work every second Saturday and Sunday Male Aged 26 -40 Large retailer*
- i) Rosters can be changed without notice/communication from managers which can make it very stressful to organise and reorganise appointments/childcare etc. Male Aged 25/U Large Retailer*
- j) As a part time employee, I am supposed to be given notice of any roster changes. This does not always happen & lately I have come to work at wrong start time due to changes in my roster which I was unaware of. This is very annoying & could be easily avoided Female Over 55 yrs Large Retailer*
- k) Decisions about rostering are usually made without consultation and with little notice or care for personal circumstance Male Aged 26 -40 Other*
- l) It's dreadful. The individual shifts are unpredictable (mornings days and nights all in the same week) and provide extremely little time for rest (ie late night shift into day off into early morning shift) Male Aged 26 -40 ...Other*

- m) *Sometimes when they change the rosters it can have an impact on family life or social life, if your partner or friends work different days/shifts to you*
Male Aged 40 -55yrs ...Other
- n) *Some of my team members joke about how their contracted hours are just a suggestion as it changes week to week. Mine are consistent week to week with the option to pick up an extra shift per week.* Female aged 40-55 Large Retailer
- o) *Some of the shifts vary in their start and finish times. I am never asked in advance if i can work those changed hours. Sometimes i am rostered on different days, I am never advised in advance that they will change and it's expected that i just follow the roster and cancel anything else i may have already organised*
Male Aged over 55 yrs Other
- p) *According to the company policy we do not have fixed roster*
Female Aged 26 -40 Major Fuel Retailer
- q) *It's not fair to be told weekly and almost daily to check your roster for changes, Especially if vocalising the issue of roster changes gets you in more trouble than it gets change*
Female 25/U Large Retailer
- r) *I hate that we HAVE to work one day on the weekend and that around Christmas time it's blackout period*
Female Aged 40-55 yrs Large Retailer

Notice/Posting of a Roster

- s) *My roster is sometimes posted Sunday evening, less than 12 hours before I could potentially start a shift. Other than that, it is irregular and I don't always receive an email outlining my shifts so I have to go onto our online roster every day and refresh just to know when I'm working*
Male Young Worker Fast Food
- t) *The rosters are never up in advance they go up Thursday or Friday afternoons for the next week*
Female Aged 40 -55yrs Large Retailer
- u) *Rosters need to be placed up further in advance. They are currently being put up on a Saturday morning, for the Monday onwards. It doesn't allow enough time to organize our life.*
Female Aged 26 to 40yrs Large Retailer

11. Further in the Study³ there was some analysis concerning variability of hours. This analysis found 2 in 5 participants and 2 in 5 parents had their shifts being changed at short notice. Variability was a key issue for workers, as can be seen in the following extract from the study.

³ Cortis N, Blaxland M and Charlesworth S (2021) 'Challenges of work, family and care for Australia's retail, online retail, warehousing and fast food workers'. . Social Policy Research Centre, UNSW Sydney y

8.5 Variability of hours

A major problem for SDA members, including parents and others with care responsibilities, is that the working hours offered by employers are highly variable, and can change at short notice, making it difficult for employees to plan stable care arrangements. Two in five participants, including two in five parents (41%) said their shifts can change unexpectedly. Those working on a casual basis were most likely to experience unexpected changes in shifts (65% agreed this was the case). However, 36% of permanent full or part-time workers also agreed their shifts can change unexpectedly (Table 8.1).

Table 8.2 Agreement with the statement “My shifts can change unexpectedly”, by contract type

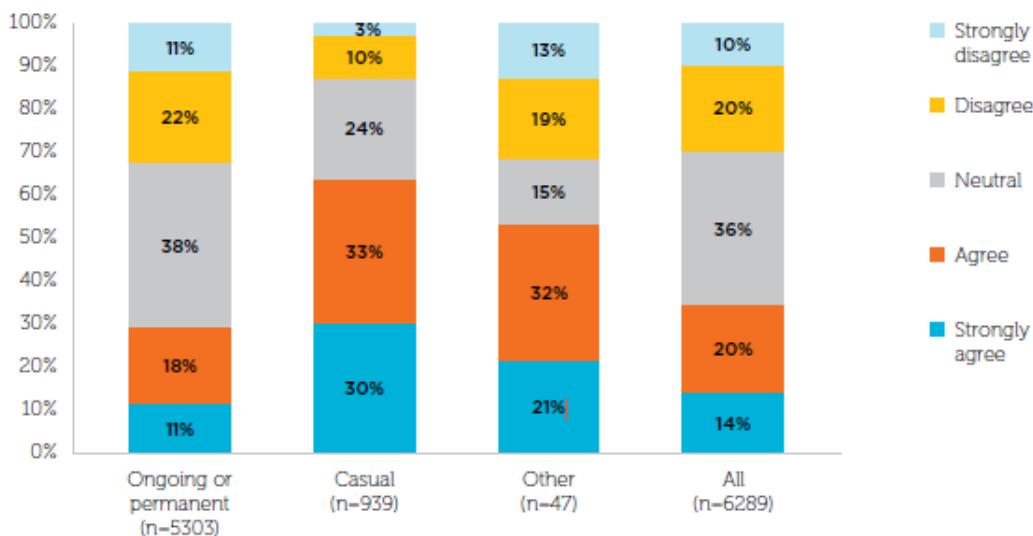
	Strongly agree		Agree		Neutral		Disagree		Strongly disagree		All	
	n	%	n	%	n	%	n	%	n	%	n	%
Casual	287	30%	330	35%	182	19%	107	11%	42	4%	948	100%
Permanent part-time	450	13%	801	23%	713	21%	1012	29%	469	14%	3445	100%
Permanent full-time	241	13%	452	24%	370	19%	529	28%	325	17%	1917	100%
All	978	16%	1583	25%	1265	20%	1648	26%	836	13%	6310	100%

Variability of hours impacts on the total number of hours people can work, and their ability to work sufficient hours to meet financial needs. As shown in Figure 8.4, a third (34%) either agreed or strongly agreed with the statement “If my hours were more predictable, I would be able to work more”; however, this was much higher among those employed casually (53%) compared with those employed on a permanent basis, 29% of whom agreed with the statement.

In addition, employees reported having very limited ability to control their working times. Figure 8.5 shows that across the sample, only 19% said they can easily adjust their start and finish times, whereas 60% disagreed (or strongly disagreed) that this is the case. Only 21% said they can change their work days when they want, while 56% could not. One in three reported having to closely monitor their phone or device to receive notice of shifts (32%).

12. The report also looked at predictability of work. If workers had more predictable hours of work, large numbers of workers indicated they could work more hours.

Figure 8.6 Agreement with the statement “If my hours were more predictable, I would be able to work more”



13. The SDA has also commissioned a further large study about various psychosocial hazards impacting retail workers. This research will be released later this year. The study has identified and examined the following hazards relevant to this review:
- **Low job control:** workers experiencing low job control have little ability to influence what happens in their work including control over tasks, work pace, and micro management.
 - **Poor job security** includes insecure employment, uncertain work availability and loss of work leading to reduce pay.
 - **Working hours and Schedule** includes roster patterns, inflexible schedules, unpredictable hours, working at short notice or working long or unsociable hours.
14. When the report is published the SDA will be able to provide more details on the issues of job security faced by retail workers.
15. The Discussion paper also has examined various provisions in some awards. Whilst these awards are chosen as being identified as the most commonly used⁴, they are also ones that have a higher concentration of female workers. This does mean there is likely a gender issue in these awards which might be contributing to the insecure work problem. Awards that cover male dominated workforce should also be considered as they might have different provisions that assist in job security.

⁴ FWC Discussion Paper 18th December 2023 PN 123

Discussion Paper Questions asked and considered

16. The SDA will in this section address the 8 questions from the Discussion paper.
17. **Q1. Are there specific provisions in the seven modern awards the subject of this review that parties consider are necessary to improve access to secure work across the economy? Parties are asked to specifically consider provisions dealing with:**
 - a. *Types or modes of employment;*
 - b. *Rostering arrangements, including rostering restrictions;*
 - c. *Payment of wages, in particular pay cycles;*
 - d. *Agreed regular patterns of work or guaranteed hours for part-time employees; and*
 - e. *Minimum engagement/payment periods.*
18. In addressing this question the SDA has also considered other provisions of the Awards that are in 2 of the 7 awards: General Retail Industry Award (**GRIA**) and the Fast Food Industry Award (**FFIA**) .
19. **Span of ordinary hours** that are broad and include all 7 days as ordinary days of work, need to be addressed to provide some stability and certainty in when an employee can be rostered
20. In awards with no span or 24 hour/7 day ordinary hours also need to provide stability and certainty in when an employee can rostered.
21. Both of these spans of hours mean there is low worker control.
22. Secure work cannot be guaranteed where an employee, even though they are permanent, does not have certainty of rosters or no or limited control over when they will be rostered. In awards that provide for a 7 day working week and a broad span of hours say 7am - 11pm (GRIA) or open 24 hour span (FFIA) then the unfortunate reality is the employee can be rostered at any time in that span. Certainty of hours of work for an individual provides security.
23. Arranging one's life around generally working 8am to 4pm only knowing and experiencing a 'roster change' to 2pm to 11pm does not provide job security.

24. Whilst a broad span of ordinary hours has enabled simplification of rostering for employers, the lack of consideration given to employees and the provision of stable and secure hours of work has rapidly decreased especially with the use of computerized rostering systems. It appears that the systems can implement a 'start afresh' for a roster cycle across a site rather than basing it off the existing rosters in place. Disclosure of how variables or settings are incorporated into an automatic system are not revealed which seems to result in items such as 'current roster of an individual' is not a parameter.
25. These automatic computer generated rosters which are 'efficient time savers' have reduced the 'human' input and decreased control of employees and managers
26. Employees can also be 'encouraged' to waive rights to roster protection conditions. Where stores have close to all employees electing to agree to waive a right, it is the implied and given pressure applied to an individual by management in order to meet some KPI or allow the roster system to operate with less restrictions.
27. A consideration that Awards should include a **Right to become Full time** when working fairly consistently on average 35 hours or more per week. Full time employment provides greater security (ie no fluctuation in hours over a roster period) and in the 'economy' other benefits flow such as accessing finance from banks.
28. In the GRIA and FFIA it is implied that Full time employees have a regular roster. However the real practice sometimes fails this as the employees do not have predictability beyond the roster cycle that is posted. A provision that provides for a **regular pattern of work** should be included so it is clear to non-industrial people that this is the right of Full time workers. This would promote security for these workers.
29. ***Q2 Are there any additional specific award provisions that are consistent with the new modern awards objective? If so, parties are asked to consider and address whether it is relevant and necessary to vary any awards to include that or those specific award provision(s).***
30. The current arrangements for pay cycles in GRIA and FFIA provide security for workers so are consistent with the modern award objective. Pay cycles being weekly or fortnightly need to be maintained as they provide regular income to workers. As industries that are low paid workforces these employees do not have a 'safety net' of

savings and live primarily pay packet to pay packet. This is illustrated by a conclusion in a Full bench decision⁵:

... retail households face greater difficulties in raising emergency funds. This suggests that their financial resources are more limited than those of other industry households

And

On the basis of the O'Brien Report and Chart 27 (see [738] above) we are satisfied that a substantial proportion of Fast Food industry employees are 'low paid'; are more likely to reside in a lower income households and are more likely to experience financial difficulties.

31. ***Q3. Are there specific award provisions that are not consistent with the new modern awards objective? If so, parties are asked to address whether it is relevant and necessary to vary any awards to amend or remove that specific award provision.***
32. The GRIA and FFIA have the part time minimum weekly hours set as 3 hours. This minimum arose from previous legislative framework including Award Simplification, which removed the higher weekly minimum hours that existed across Retail and Fast Food Awards (ranging from 9 hours to 20 hours).
33. Having only a 3 hour minimum per week is not consistent with the promotion of job security. A guaranteed weekly 3 hours is illusionary for providing a proper and decent income. For some workers the attraction of the casual loading on 3 hours would outweigh the benefit of part time.
34. Workers are wanting more hours guaranteed each week, not a reliance on being flexed up.
35. A recent report⁶ from the Australian Bureau of Statistics showed a large number of workers in retail (especially women) are working multiple jobs.

⁵ [2017] FWCFB 1001 PN 1656 and PN 1356

⁶ Australian Bureau of Statistics (8 September 2023), [More people working two or more jobs, with women and younger workers more likely](#), ABS Website, accessed 1 February 2024.

Levels and rates of multiple job-holding, by sex, by industry

Industry	Multiple job-holding rate (%)		
		Males	Females
Health care and social assistance	7.7	33,100	124,100
Education and training	7.0	24,700	59,100
Accommodation and food services	7.8	42,200	55,100
Retail trade	5.9	36,300	51,500
Administrative and support services	9.4	51,400	38,900
Professional, scientific and technical services	5.0	32,900	32,200
Public administration and safety	5.4	19,700	21,700
Other services	5.4	13,100	17,200
Agriculture, forestry and fishing	9.3	26,300	15,700
Arts and recreation services	8.8	10,900	13,800
Manufacturing	4.3	26,500	12,800
Construction	5.6	59,100	12,600
Financial and insurance services	4.2	9,700	10,900
Transport, postal and warehousing	5.1	26,100	10,500
Wholesale trade	4.2	14,900	10,300
Rental, hiring and real estate services	5.7	8,800	9,500
Information media and telecommunications	5.3	5,700	4,900
Mining	5.4	9,500	2,200
Electricity, gas, water and waste services	3.6	3,600	1,300

Source: Australian Bureau of Statistics, More people working two or more jobs, with women and younger workers more likely 8/09/2023

36. This multiple jobs in industries such as Retail does add to the lack of security not being met by awards. The SDA proposes that in the Awards relevant to its members, a **weekly minimum for Part time work should be 15 hours** at least.
37. In GRIA **roster changes** can be posted with 7 days notice unless disagreed which then extends to 14 days notice. This is also after the consultation on the roster change has occurred in line with Clause 35. This provision does not reflect that security is a consistent roster over more than a 7 day period as experienced by SDA members. This is also compounded by late posting of rosters.
38. The SDA seeks that an employee should have the right to **status quo on a roster dispute**. This should be a general provision but if not, then it could be 28 days to allow parties time to consult about the change. Also the dispute provisions in Awards have the ultimate power in the employer's hand as there is no arbitration right for an employee unless the employer agrees. The current process does not provide security to a worker. The SDA would see that an **arbitration right on roster change disputes** would be implemented. Having an arbitration right does not mean it will be used/accessed but if parties know that FWC can arbitrate, then better process might be engaged to avoid or lessen the 'risk' of the employer being taken to arbitration.

39. Another award provision that is not consistent with the new FW Act provisions is **Personal leave not having penalty rates paid**. This means that the worker who takes personal leave has their pay reduced if they happen to work on shifts with penalties or shiftwork. A worker that is engaged as a shiftworker under GRIA and is paid the appropriate penalties for this work, does not receive the penalties if they take personal leave so suffer a reduction in their take-home pay. The same applies to workers who are engaged on evening work or weekend work.
40. The SDA proposes that **penalty rates should be paid on personal leave** which would then address the concern. Guaranteed income is one of the components that make up security of work for employees.
41. Another issue regarding guaranteed income is payment of wages. Currently neither the GRIA or FFIA allow for **pay averaging for Full time employees**. This does result in fluctuations in paypackets due to the ordinary hours worked in each week or fortnight.
42. Depending on a roster arrangement a Full time worker can work less ordinary hours between roster cycles eg 6 days in week 1 and 3 days in week 2, resulting in a large difference between pays for these 2 weeks.
43. To overcome this issue the SDA would suggest that an averaging provision be added to the payment of wages clauses, which is in some other awards:
- (i) *actual ordinary hours worked each week or fortnight; or*
 - (ii) *average number of ordinary hours worked each week or fortnight*
44. **Q4. Having regard to the new modern awards objective, should the exclusion of casual employees from accessing certain NES entitlements (such as paid personal leave) continue? And**
- Q5. Should any of the awards be varied to supplement these NES entitlement gaps for casual employees?**
45. The ACTU has made a submission on these matters which reflect the SDA's position. In particular the SDA would see two areas requiring adjustment in awards:
- i) **Paid Bereavement leave for casuals**

- ii) A clear provision that **Casuals can take personal leave** without the fear of being terminated.

46. ***Q6. Is there evidence that use of individual flexibility arrangements undermines job security?***

47. The SDA has continued to argue against unfair individual flexibility arrangements (IFA) that members face, which are not better for the individual, reduce conditions and apart from giving employment have no benefit to the employee, least of all providing 'job security'.

48. The SDA has attached at Attachment 1 one such example.

49. Despite the IFA stating : 'Under these agreed variations, the Employee will enjoy flexible and guaranteed work hours to suited to their individual needs, ensuring they are better off overall under this Agreement.' There is no 'individualisation of conditions and no benefit to the employee are discernible in the IFA.

50. This IFA has provisions that:

- Allows work to start at 7am on a Sunday (rather than 9am) to 'avoid traffic'
- Removes Penalties on weekends (and no offset)
- Prohibits discussing the IFA with other workers
- Requires medical certificates for paid sick leave

51. The IFAs continue to be dressed up and polished to give the appearance of benefit but reality is very different to the pretty words.

52. ***Q7. Having regard to the following modern award standard clauses:***

- ***Individual flexibility arrangements;***
- ***Consultation about major workplace change;***
- ***Consultation about changes to rosters or hours of work;***
- ***Dispute resolution;***
- ***Termination of employment; and***
- ***Redundancy.***

a. Are provisions of the standard clauses consistent with the new modern awards objective?

b. Do any of the standard clauses negatively impact job security? If so, how?

c. Do any or any part of the standard clauses:

i. prevent or limit access to secure work?

ii. enhance access to secure work?

Q8. Are there variations to the standard clauses that could improve access to, or remove barriers to accessing, the standard clauses by employees who are vulnerable to job insecurity?

53. The SDA relies upon the submission of the ACTU in respect of these 2 questions. We do note that some of our earlier submissions above do also address some of the 'standard' provisions.

Appendix A: Rationale for SDA policy positions

Principles underpinning SDA policy positions

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

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

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

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

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

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

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

