Queensland Nurses & Midwives' Union

Submission to

Standing Committee on Employment, Education and Training

Inquiry into the digital transformation of workplaces

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Introduction

The Queensland Nurses and Midwives' Union (QNMU) thanks the Standing Committee on Employment, Education and Training (the Standing Committee) for detailed consideration for the opportunity to provide feedback on the *Inquiry into the digital transformation of workplaces* (the inquiry).

The QNMU is Queensland's largest registered union for nurses and midwives, representing over 74,000 members. The QNMU is a state branch of the Australian Nursing and Midwifery Federation (ANMF) with the ANMF representing over 326,000 members.

Our members work in health and aged care including public and private hospitals and health services, residential and community aged care, mental health, general practice, and disability sectors across a wide variety of urban, regional, rural, and remote locations.

The QNMU is run by nurses and midwives, for nurses and midwives. We have a proud history of working with our members for over 100 years to promote and defend the professional, industrial, social, and political interests of our members. Our members direct the QNMU's priorities and policies through our democratic processes.

The QNMU expresses our continued commitment to working in partnership with Aboriginal and Torres Strait Islander peoples to achieve health equity outcomes. The QNMU remains committed to the Uluru Statement from the Heart, including a pathway to truth telling and treaty. We acknowledge the lands on which we work and meet always was, and always will be, Aboriginal and Torres Strait Islander land.

We will respond to the inquiry's terms of reference with a particular focus on the healthcare sector, the role of nurses and midwives and technology's impact on their workplaces.

Terms of reference

a) The benefits for productivity, skills development, career progression and job creation in Australia.

The implementation of digital technologies is fundamentally changing how we work. If implemented appropriately, these technologies have the potential to improve the productivity of the health system and offer many benefits for workers. Technologies like electronic health and medical records, telehealth, remote care services and artificial intelligence (AI) can provide benefit by improving patient data collection and access to timely patient information, streamlining repetitive tasks that can be automated and allowing for more clinician-to-patient time, enhancing diagnostics, remote health consultations and monitoring, drug discovery and development, treatment planning, risk stratification and triaging, and education, some of which are already in place (Productivity Commission, 2024). However, despite these benefits, the wider adoption of digital technologies comes with substantial risk and complexity and has great and demonstrated potential for harm. The QNMU remains supportive of the adoption of digital technologies in healthcare, only where the potential for benefit and improved outcomes for patients, community and the workforce, outweighs the likelihood of harm.

The Standing Committee appears to have embraced the assumption that the rapid development and uptake of automated decision making (ADM) and machine learning (ML) techniques in the workplace will bring benefits, such as new and better jobs and opportunities for skill development and career progression. Whilst many potential benefits do exist, they are not guaranteed and remain reliant on digital technologies being engaged and regulated in a way that drives and protects these benefits for workers. We remain concerned that there are greater risks associated with digital technologies being utilised in healthcare to drive cost savings and efficiencies for employers, which will likely have profound impacts on workers, such as mass workforce redundancies and job displacement. The growth of AI, both in terms of the technology that underpins it, and the ever increasing private and public sector applications, poses new risks to worker's rights and will create new power dynamics in our society and exaggerate existing ones that would lead to worse outcomes if left unmitigated.

As outlined in our submission, the rapid uptake of these technologies is already causing distortions in various aspects economy and society that will have profound influences and it will take time to know the long-term consequences. The QNMU calls on governments to have a responsibility to manage the implementation of digital technologies in a way that minimises social impacts and mitigates these risks, while benefiting society.

Transitional arrangements
The wider adoption of digital automation and AI will require the reskilling of the workforce, as jobs become gradually replaced by autonomous, digital systems and new jobs are developed. Without appropriate planning, these transitions have the potential to exacerbate the current crisis of inequality and insecure work in Australia.

To date, the concept of transition arrangements has been broadly supported but not widely applied in Australia. Unions have long been advocating for transitional arrangements to mitigate the workforce impacts and support Australia's energy transition (Australian Council of Trade Unions, n.d). Workers in industries most-heavily affected by transitions in the way we work should not bear a disproportionate burden of the cost of change. Unions have called on governments to assist workers by implementing transitional arrangements, including undertaking planning, investing in re-skilling, retraining and redeploying workers, and investing in diversifying the economies of impacted communities.

The QNMU emphasises the need to safeguard workers' rights and interests in the transition from an economy based on paid labour, to an economy based increasingly on automated-autonomous production, taking forward the lessons of the coal and energy sectors. This will necessitate strategic planning in how digital systems are implemented throughout the workforce and investment into transitional arrangements to ensure employment security for all workers are prioritised. These transitions need to be planned for and funded adequately.

b) The role of business software and regulatory technology ('Reg Tech') in improving regulatory compliance in the workplace relations system, including their use by regulators, and accountability for errors resulting in non-compliance.

In framing our response to this term of reference we will highlight the recent failure of the Robodebt scheme where business software and Reg Tech were not used for regulatory compliance in workplace relations systems.

Robodebt scheme

Centrelink's Online Compliance Intervention program, known as Robodebt, ran from 2016-2019 by the Federal Government. Robodebt used a simplistic algorithm where it drew data from two different government systems, one belonging to Centrelink and another one to the Australian Tax Office (ATO). The two datasets were incompatible and saw the debt sums based on pure speculation by the system. The responsibility of calculating potential overpayments shifted from humans to an algorithm (The University of Queensland, 2021). This process raised more than half a million inaccurate Centrelink debts through a process of 'income averaging' which has now since been ruled unlawful.

Articulated in the report from the *Royal Commission into the Robodebt Scheme* (Robodebt Royal Commission) is that:

> Robodebt was a crude and cruel mechanism, neither fair nor legal, and it made many people feel like criminals. In essence, people were traumatised on the off-chance they might owe money. It was a costly failure of public administration, in both human and economic terms (Commonwealth of Australia, 2023).

The year before the implementation of the system in 2015, the risk management undertaken showed the creation of the program where manual oversight was removed was a risk. A year later government officials and ICT experts continued to express concerns about the accuracy of the debt calculated if a manual step was not included in the process (Henriques-Gomes, 2020). Public outcry was continually reported on in the media describing the heavy-handed approach where welfare recipients were incorrectly issued debt notices and being pursued by debt collectors.

In response, the Robodebt Royal Commission presented 57 recommendations including:

- Design policies and processes must have an emphasis on the people they are meant to serve.
- Peak advocacy bodies should be consulted prior to the implementation of projects involving the modification of the social security system.
- Governance of data-matching programs must be reviewed and strengthened.
- Reform of legislation and implementation of regulation in ADM.
- Establishment of a body to monitor and audit ADM.
- An Administrative Appeals Tribunal (AAT) be put in place to identify AAT cases that raise significant legal and policy issues to ensure that they are brought to the attention of senior government officers.

These recommendations show the fundamental breakdown in governmental administration and the failure of accountability checks and balances. Robodebt was completely without legal foundation and was allowed to continue even when illegality of the system was repeatedly questioned. That a number of unnamed individuals are to be referred for criminal and civil prosecution speaks to the magnitude of the system failure.

While there are benefits to using algorithmic decision-making, such as efficiency and cost savings, there can also be consequences as seen with Robodebt. The cost of the Robodebt disaster included:

- Financial costs:

    - $1.73 billion in debts unlawfully raised against 433,000 people.
    - $751 million wrongfully taken from 381,000 people (The University of Queensland, 2021).
- Human costs:
    - Significant harm to many who received unlawful debts and it has been blamed for some deaths including suicides (RMIT University, 2023).
    - Significant distress to welfare agency staff.

This Robodebt scheme example illustrates that governments and employees must understand the environment in which the system is being rolled out and remain attentive to any negative feedback signals. Robust testing must predate any release and continue once in place. Failure to have and observe regulatory compliance in workplace relations systems must have significant consequences for those who choose to ignore compliance.

c) The risks, opportunities, and consequences for the nature of work, including effects on hiring, rostering, work intensity, job design, wage setting, monitoring, surveillance and job quality.

As mentioned above, the QNMU acknowledges there are opportunities for incorporating AI into healthcare with the potential to support health practitioners to provide high quality care. AI has the potential to assist in care delivery, reduce inefficiencies in systems and lead to more appropriate allocation of resources. However, the QNMU considers the rapid development and uptake of ADM and AI technologies in the workplace, without careful scrutiny and planning, has the potential to cause more adverse consequences for workers than opportunities.

Many AI risks have been well known before recent advances in ADM and ML techniques (Commonwealth of Australia, 2024; McKinsey & Company, 2023). The International Labour Organisation predicts that the application of ADM and AI technologies will most likely reduce a significant proportion of lower value, repetitive types of work, such as clerical and administrative roles (Gmyrek et al., 2023). This type of work is typically performed by women, with predictions that the adoption of ADM and ML techniques will have a disproportionate impact on the employment of more vulnerable groups of people (Bankins & Formosa, 2023).

The ACTU (2024), in its submission to the recent *Senate Select Committee on Adopting AI* Inquiry referred to the discriminatory impact that the use of AI tools can have when used to make human resources-related decisions. For example, Amazon used AI to conduct reviews of resumes during its recruitment process. The AI logarithms built upon previous recruitment decisions that favoured men and replicated this learning in its shortlisting process. This resulted in women being discriminated against when applying for software development and technical jobs (Blackham, 2023). Even after the gender-based discrimination was first observed and changes made, the AI tool developed the ability to continue to discriminate against female applicants using other, more subtle indicators such as the schools and universities women attended and sports in which they participated.

As the ACTU (2024) has noted, AI-enabled predictions regarding applicants' likelihood of being a union member could also be used to discriminate against job applicants. Concerns regarding the potential for discrimination of applicants shortlisted using AI technology have

been raised in Queensland. A large Queensland Hospital and Health Service (HHS) recently trialled the use of AI for its graduate recruitment process, which raised significant concerns from Nurse Managers and the QNMU about biases, unfair disadvantages, and/or discrimination for qualified applicants. The HHS has since decided to abandon the use of AI for subsequent recruitment campaigns citing that the system required improvements in validity and reliability.

The ACTU (2024) has also cited concerning evidence demonstrating the detrimental impact that implementation of ADM and AI technologies have had on the nature of employment relationships. Large companies in Europe and the USA have used AI technologies to monitor employees' workplace conversations to assess levels of employee sentiment, acceptance or non-compliance with Human Resources policies (Broomfield, 2024). Studies have found that employees whose employers monitored their conversations reported higher levels of stress than employees who had not been monitored (Lerner, 2023). As noted by the ACTU (2024), a subsidiary of Amazon has also used AI technology assessing employee sentiment to predict their 'risk' of unionisation.

In Australia, the Commonwealth Bank of Australia (CBA) has used AI technology to secretly monitor and assess workers' productivity. Workers reported being intimidated to take leave if the AI-informed assessment deemed they were not productive enough (Sharples, 2023). QNMU members report that an organisation providing health services has also been covert in its use of technology. Cameras installed in a Mental Health Unit for the stated purpose of patient safety were subsequently used to monitor nurses' performance of regulated observations.

Risks have also been identified for automated rostering systems if the algorithm developed do not take into account human needs and changes to workers' availability. There is potential to disadvantage diverse groups of workers, such as parents, carers and older people who need to balance paid work with other care responsibilities. Opaqueness surrounding worker engagement with automated rostering systems also makes it more difficult for workers to arrange shift changes and to organise around collective concerns.

Similarly, concerns have been raised regarding the way that wage information is input into payroll databases. Given that organisations often employ a range of workers under various awards and jurisdictions resulting in complex pay rates and conditions, there is a risk that mistakes will occur and that employees will suffer wage theft. Greater transparency is needed to enable employees to interrogate pay information provided by wage systems to determine if their remuneration is compatible with relevant awards and enterprise bargaining agreements.

Having control and a degree of autonomy over work is a key factor in job quality (Gmyrek et al., 2023). If ADM and AI technology is implemented in a way that leads to workers losing autonomy over their work tasks and schedule, this will contribute to reducing job quality and satisfaction. To mitigate these risks, the QNMU emphasises the need for workers, specifically nurses and midwives, to be engaged and consulted on any potential ADM and AI technologies that impacts their work. Appropriate and meaningful consultation is central to ensuring systems and strategies are effective and fully consider any workflow implications that may arise.

The QNMU endorses the ACTU (2024) position that the union movement seeks to eliminate harm to workers and vulnerable groups of people within society associated with adoption of ADM and AI technologies, while striving for the equitable distribution of the benefits.

d) The effects of these techniques on the scope of managerial prerogative, labour rights, ability for workers to organise, procedural fairness, equality, discrimination, and dignity at work.

The implementation of ADM and ML techniques risks exacerbating the significant power imbalances that already exist between employers and workers, thus expanding the scope of managerial prerogative (Gmyrek et al., 2023). The examples provided in response to Term of Reference (c) demonstrate how organisations that monitor employees' workplace conversations to assess worker sentiment and 'risk' of unionisation can curtail workers' ability to organise through the threat of punitive measures (Broomfield, 2024).

There is currently no requirement for employers to disclose how they use AI technologies or if there are problems in how they are used (Workplace Express, 2024). This lack of transparency places workers and unions at a significant disadvantage when organising for the protection of workers' rights. As the CBA example outlined earlier demonstrates, workers were unaware that CBA was using a desk booking system to monitor their work attendance (Sharples, 2023). There are obvious implications for procedural fairness if workers have no knowledge or access to the information that is being used to assess their performance and make decisions about their employment. We assert that technology should only be used for the purposes for which it is intended and that consultation with workers regarding its use is critical.

We agree with recommendations that at a minimum, there should be a prohibition on worker monitoring or collection of data outside of work or in contexts that pose a risk to human dignity or the exercise of human rights (Gmyrek et al., 2023). Further, we support recommendations that the Australian Human Rights Commission (AHRC, 2024) made in its submission to the *Select Committee on Adopting Artificial Intelligence*. These recommendations include that:

- Australia should strengthen existing legislation and then introduce AI-specific legislation, if necessary, to address risks that are not currently within the scope of the existing regulatory framework; and
- Australia should adopt a human rights-centred approach to AI development and deployment.

These actions are imperative, given difficulties applying anti-discrimination laws to existing AI systems and determining liability when unlawful discrimination occurs (AHRC, 2024).

e) Appropriate safeguards or regulatory interventions to guide responsible implementation in the workplace, including the digital skills and resources necessary for employers to appropriately utilise these technologies.

Health practitioners have a duty of care to provide safe, high-quality patient care by making informed clinical decision-making based not only on available tools and information but using their own clinical judgement and expertise. Identifying data anomalies, abnormal reading, and conflicting information is a key element of a nurse or midwife's assessment skills.

However, we note that the level of technological ability in health practitioners to understand, assess, and integrate digital health technologies safely into clinical practice is generally limited (Rowland et al., 2022; Tozzo et al., 2021). Clinicians are also more likely to attribute the source of technology-based errors within people, processes and context rather than the technology itself (Ndabu et al., 2021), which risks scenarios where clinicians fail to identify when technology is either not fit for purpose or malfunctioning.

Regulating the use of AI, ADM and ML algorithms in health systems must therefore address the intricacies of managing patient expectations of AI's capabilities with the professional standards for clinical staff to safely use the clinical tools available to support their practice with confidence.

The following issues highlight the complexities in regulating AI, ADM and ML in healthcare.

Professional liability

The QNMU considers that where a health practitioner has made a serious clinical error based on information provided by ADM, and has been directed to use ADM as part of their practice, the professional liability should not rest solely upon the health practitioner.

Incident review mechanisms typically take the approach of learning how to avoid errors being made in future. However, often even the developers of AI and ADM programs have limited control over the outputs i.e. the 'black box' nature of deep learning and AI decision-making (Panch et al., 2019). AI actions are rarely 'explainable' and, because of continuous ML, are likely to continuously change with increased inputs or usage.

It would be unreasonable to expect the same degree of technological ability from health practitioners to understand, identify, and troubleshoot the reasoning behind AI or ADM outputs. This raises questions regarding the responsibility to rectify AI errors, whether these errors can be rectified at all, and perhaps most importantly, accountability when an AI error is identified but there is no clear way of rectifying the issue without substantially altering the program at the developer level. The lack of 'explainability' for many AI or ADM systems must be accounted for in instances of clinical errors and be a mitigating factor for health practitioners who have erroneously applied AI or ADM outputs in their practitioner.

Thus, governance and accountability of AI necessarily includes a broad spectrum of stakeholders, including software developers, government agencies, health services, medical professional bodies, and patient interest groups (Reddy, 2020). The inherent risks in AI, consideration and review of product safety of health technologies that use AI, and the need to uphold minimum safety standards for health technologies, add further regulatory complexity.

Therefore, penalising a health practitioner for serious clinical errors based on AI or ADM disregards the evolving medico-technical landscape where practitioners are increasingly trained to use AI or ADM-based tools for diagnostics and decision support.

Safe Harbour provisions

Following an inquest into the tragic case of the Perth Children's Hospital, recommendations were made to introduce "Safe Harbour" provisions for nurses. These provisions aim to protect nurses from disciplinary action by the Australian Health Practitioner Regulation Agency (Ahpra) if an adverse event occurs when the nurse acts within their scope of practice and where "known risks in the workplace have been identified and not rectified by the employer" (Linton, 2023).

We consider the introduction of similar provisions should be implemented where an adverse event occurs when the nurse or midwife relies on AI or ADM programs as part of their practice and acts in good faith within their scope of practice and the employer is aware of specific risks associated with the use of AI or ADM-based systems and failed to address these risks.

Employee protections

Nurses and midwives must be able to reject the use of an AI or ADM program if they genuinely believe that it causes harm to the patient and there are alternative, safe ways of providing the same clinical intervention. There must also be mechanisms and pathways to raise patient safety concerns about an AI or ADM program without fear of retaliation by employers.

f) The effects on gender equality, job security, small businesses, Closing the Gap and disadvantaged and vulnerable cohorts of workers.

The healthcare sector has a long history of gender, racial, and socio-economic bias and the use of ADM and ML carries the risk of perpetuating this inequality. As highlighted previously, algorithms are trained on data sets and if those sets are not representative of the population, or fail to acknowledge existing inequalities within demographic groups, these algorithms can encode inherent biases into its outputs (Nadeem et al., 2022). This may lead to situations where the clinical judgement of nurses and midwives is at odds with biased algorithms.

Examples of potential algorithm bias include an algorithm trained primarily on data from male patients that might misdiagnose or underdiagnose female patients who present with a different range of signs and symptoms, or an algorithm trained on data of predominantly white Caucasian people failing to detect cancers or other medical abnormalities on people with darker skin tone (Shrestha & Das, 2022).

We therefore consider that regulatory interventions for ADM and ML should explicitly address and rectify potential biases through:

- A requirement for software developers who develop ADM and ML tools for use in the healthcare sector to provide evidence of using gender-balanced data sets or demonstrated actions to mitigate the effects of potential gender, racial, and/or socio-economic biases.
- Transparency in the development and deployment of technologies in how they arrive at decisions and identify any potential biases (Ng & Gray, 2022).
- Ensuring a human-centred approach to healthcare, where ADM and ML serve to augment the work of nurses and midwives, and not to replace them.

While we acknowledge there are benefits to automating certain routine tasks or tasks that require large sets of data analysis, it is vital that the core skills of nurses and midwives – of critical thinking, clinical judgement, informed decision-making and empathy – is not replaced by automated decision-making.

To ensure that the job security of nurses and midwives is not disrupted by the integration of ADM and ML in the healthcare sector, we advocate for:

- Government investment in upskilling programs to support nurses and midwives in developing the digital and technical skills needed to practice alongside ADM and ML in healthcare.
- Identification and introduction of specified roles for nurses and midwives that take advantage of their expertise and unique skills set to shape, manage, and support automation.
- Fair transition plans for nurses and midwives whose roles will be impacted by automation, including guaranteed opportunities for redeployment when requested by a nurse or midwife.
- Targeting training programs designed specifically for rural and remote nurses and midwives to build digital literacy and capabilities in ADM and ML technologies.

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