

Australia-Singapore Digital Economy Agreement

Submission by the Australian Council of Trade Unions to the
Joint Standing Committee on Treaties

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Introduction

The ACTU welcomes the opportunity to make a submission to the Joint Standing Committee on Treaties 'Digital Economy – Singapore inquiry'. The *Australia-Singapore Digital Economy Agreement (DEA)* was signed on 6 August 2020; once in force, it will amend the *Singapore-Australia Free Trade Agreement (SAFTA)*, signed on 17 February 2003.

The ACTU is the peak body for Australian unions. The ACTU and affiliated unions have had a long and significant interest in the trade agenda on behalf of workers and their communities.

According to the Department of Foreign Affairs and Trade (DFAT), the *DEA* “will establish cutting-edge global benchmarks for trade rules”¹. Australian Unions are concerned that the *DEA* sets a new standard for the deregulation of the digital economy that will have far-reaching impacts, including undermining workers' rights.

In particular, Australian Unions oppose restrictions on the regulation of cross-border data flows, restricting requirements on local presence and storage of data, and restricting access to source code. These rules will lock in deregulation of the digital economy and cement the power of big tech companies over workers. Although tech companies did not invent insecure work, many have developed digital platform business models built on precarity and exploitative labour practices. The *DEA* will be enforceable through the Investor-State Dispute Settlement (ISDS) mechanism in the *SAFTA*, giving further power to tech companies.

Furthermore, this new standard on the digital economy will be adopted with even less public scrutiny than Australia's usual treaty-making process; it does not require any legislative change and therefore will not be subject to a debate and vote in Parliament.

At a time when governments should be focusing on how to recover and rebuild from the COVID-19 crisis, which will require the regulatory space to respond, the Australian Government should not be making agreements which will restrict its ability to regulate in the public interest.

¹ DFAT National Interest Analysis, Australia-Singapore Digital Economy Agreement, [8], https://www.aph.gov.au/-/media/02_Parliamentary_Business/24_Committees/244_Joint_Committees/JST/2020/Digital_Economy_Agreement/11_NIA_AustraliaSingapore_Digital_Economy_Agreement.pdf?la=en&hash=CD46A7A13BAA3FC3A3D3C01FA045798BEC440F97

Workers need governments to implement strong regulations in the rapidly evolving digital economy to protect human rights and ensure new technology benefits us all. Australia's employment laws, human rights laws, privacy laws, and competition laws all need to be strengthened to respond to the development of the digital economy.

Recommendations

1. The ACTU opposes the *DEA* and recommends that it not be implemented;
2. The Committee should examine whether the *DEA* gives sufficient regulatory space for the regulation of digital platform work;
3. The Committee should require a thorough, independent assessment to determine whether the exceptions in *DEA* to preserve Australia's regulatory and policy flexibility are sufficient to protect the public interest;
4. The Committee should examine whether the *DEA* will constrain the ability of the Australian Government to access and utilise data to conduct due diligence in supply chains;
5. The Committee should examine the impact of digital trade rules on the ability of the Australian Government to enforce tax law and develop new taxation regulation;
6. The Committee should oppose future restrictions on the regulation of algorithms;
7. The Committee should recommend an independent review of the *DEA* three years after implementation to evaluate the impact prohibitions on restrictions to cross-border data flows, local data storage and local presence, and limits to regulation of source code have on the public interest;
8. The Committee should examine whether the *DEA* would limit the ability of the Australian Government to strengthen privacy laws to keep pace with developments in the digital economy;
9. The Committee should examine the implications of the *DEA* on workers' privacy.

The digital trade agenda

The *DEA* and similar digital trade rules lock in a deregulatory agenda that will make it difficult for governments to regulate the digital economy now and into the future. Technology industry groups have lobbied for trade rules to protect the industry from regulation; in 2014 the Office of the US Trade Representative published the 'Digital 2 Dozen'² principles to guide future trade negotiations, which codified the industry's demands. As trade expert Deborah James explains, these principles are far reaching:

Big Tech has proposed the rules in order to consolidate its exploitative business model, including: gaining rights to access markets globally; extracting and controlling personal, social and business data around the world; locking in deregulation and evading future regulation; accessing an unlimited supply of labour that has been stripped of its rights; expanding its power through monopolies; avoiding the payment of taxes.³

These principles were first adopted in the electronic commerce (e-commerce) chapter of the Trans-Pacific Partnership Agreement, and were left unchanged after the US left the agreement. The *DEA* goes further than the digital trade arrangements in the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP)⁴, and represents an ambitious deregulatory agenda that the Australian Government is advocating for in the World Trade Organisation (WTO)⁵ and would like to see promulgated to other trading partners in our region.⁶

The Australian Government must protect its ability to regulate

The digital economy is still new and rapidly evolving, and governments need to grapple with the impact it will have on industries and how to regulate it. The current Australian Competition and Consumer Commission (ACCC) proposal⁷ to regulate tech giants Google and Facebook through the draft news media bargaining code that aims to address the power imbalances between news businesses and the tech companies illustrates the need for more regulation of the digital economy.

² Office of the United States Trade Representative, 'The Digital2Dozen principles' (2016), <https://ustr.gov/sites/default/files/Digital-2-Dozen-Updated.pdf>

³ Deborah James, 'Digital Trade Rules: A disastrous new constitution for the global economy, by and for big tech', Rosa-Luxemburg Stiftung, Brussels (2020), p. 7, <https://www.rosalux.eu/en/article/1742.digital-trade-rules.html>

⁴ Public Services International, 'Digital trade rules and big tech: surrendering public good to private power', p.12 https://pop-umbrella.s3.amazonaws.com/uploads/f2bdc3d-c353-4846-a23b-82dec9a9e6d7_2020_-_ASIA_DIG_REPORT_3_1_.pdf

⁵ DFAT National Interest Analysis, [9]

⁶ *Ibid.*, [4]

⁷ ACCC, 'Australian news media to negotiate payment with major digital platforms', <https://www.accc.gov.au/media-release/australian-news-media-to-negotiate-payment-with-major-digital-platforms>

Locking in deregulatory rules at such an early stage of development of the digital economy will see the ownership and control of data concentrated in the hands of a few corporations, leaving governments unable to maximise the public good benefits that can come with digitalisation. The Australian Government must preserve the ability to regulate in the digital domain. Although *DEA* contains some exceptions regarding cross border data transfer, localisation of computing facilities, access to source code and the regulation of privacy, it is uncertain whether these exceptions will be enough to enable the Australian Government to regulate in this rapidly changing area.

As the International Trade Union Confederation argues,

Government regulation and enforcement is necessary – to protect workers, to protect personal data, to avoid market power abuses and protect economic freedom, to industrialise/digitalise, and to ensure that taxes and contributions are paid where value is created. In the absence of a global regulatory system on e-markets, data localisation is required for governments to regulate effectively.⁸

Instead, the *DEA* restricts the regulatory power of government and is enforceable by corporations through the Investor-State Dispute Settlement (ISDS) mechanism in *SAFTA*, which will mean Singaporean investors could sue the Australian Government if they can argue that a change in law or policy will impact on their profits.

The ACTU has a consistent position that ISDS clauses are a restriction on national sovereignty and the ability of governments to regulate in the public interest and impose an unnecessary cost burden on Australian taxpayers. They should not be included in any trade agreement that Australia enters into.

Recommendation 1: The ACTU opposes the *DEA* and recommends that it not be implemented.

Workers' rights

The *SAFTA* contains no commitments to safeguard workers' rights or implement International Labour Organisation (ILO) standards; instead, the *DEA* is likely to undermine workers' rights by preventing the government from regulating the 'gig economy'.

⁸ International Trade Union Confederation, 'A workers' agenda for e-commerce', 3/10/18, <https://www.ituc-csi.org/WTO-public-forum-2018-workers-agenda-for-e-commerce>

‘Gig economy’ work, where the employment relationship is mediated by a digital platform, is prevalent in Australia. A recent national survey on digital platform work in Australia, commissioned by the Victorian Department of Premier and Cabinet, found that more than 100 different platforms are being used by survey respondents to undertake digital platform work in areas as diverse as transport, food delivery, professional services, maintenance, and care services.⁹

The business model of digital platform companies tends to be consistently denying the existence of an employment relationship and promoting precarious work, paying workers below the Award minimum payrates, and failing to provide adequate workplace health and safety protections. As the International Trade Union Confederation’s report ‘Free Trade Agreements, Digital Chapters and the impact on Labour’ notes: ‘key to the success of all these platforms is the huge amount of data that they collect and process together with their ambition to disrupt and dominate existing markets, often with little regard for existing regulation or the wider social impacts.’¹⁰ The privileging of big tech companies in digital trade rules will further proliferate exploitative business models.

The recent *Inquiry into the Victorian On-Demand Workforce* noted that

The growth of digital platforms in Australia, using models that operate outside of labour market regulation, has put the spotlight on the need to balance agility and flexibility, with protections. It has intensified the imperative to ensure our labour market regulation meets the needs of our modern ways of working.¹¹

The report goes on to make recommendations for reform to protect digital platform workers. If the Australian Government adopts digital trade rules in trade agreements, it will impede the ability of current and future governments to regulate for decent work in the growing digital platform economy. In addition, the ISDS provisions in SAFTA could mean that any government action to regulate the gig economy, for instance by classifying workers as ‘employees’ or regulating to curtail the ability of companies to collect data from surveillance of their employees, could see the Australian Government being sued for negatively impacting on the company’s investment.

⁹ Victorian Department of Premier and Cabinet, *Digital Platform Work in Australia: Preliminary findings from a national survey*, Inquiry into Victorian On-Demand Workforce, 18 June 2019, <https://apo.org.au/sites/default/files/resource-files/2019-06/apo-nid242706.pdf>

¹⁰ ITUC and New Economics Foundation, ‘Free Trade Agreements, Digital Chapters and the Impact on Labour’, https://www.ituc-csi.org/IMG/pdf/digital_chapters_and_the_impact_on_labour_en.pdf, p. 24.

¹¹ Victorian Government, ‘Report of the Inquiry into the Victorian On-Demand Workforce’, June 2020, https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/4915/9469/1146/Report_of_the_Inquiry_into_the_Victorian_On-Demand_Workforce-reduced_size.pdf p. 185.

Recommendation 2: The Committee should examine whether the *DEA* gives sufficient regulatory space for the regulation of digital platform work.

Transparency

The process for negotiating and enacting the *DEA* has been even more secretive and undemocratic than Australia's usual treaty-making process. As our submission to the current Joint Standing Committee on Treaties inquiry into 'Certain Aspects of the Treaty-making Process in Australia' highlights, Australia's current trade agreement process is opaque and lacks democratic accountability:

- Cabinet makes the decision to initiate trade negotiations and receives reports on the progress of negotiations.
- The text remains secret until the deal is completed.
- Cabinet makes the decision to sign the completed agreement before the text becomes public and without independent evaluation.
- Only after the agreement is signed is the text tabled publicly in Parliament and reviewed by the Joint Standing Committee on Treaties (JSCOT).
- There is no independent assessment of the economic costs and benefits of the agreement, or of social or regional impacts, before it is signed. The National Interest Assessment is done by DFAT, the department that negotiated the agreement, and it always gives a favourable assessment.
- The JSCOT reviews the agreement but it cannot make any changes to the text. It can only make recommendations which are not binding on the government.
- Parliament does not vote on the text of the agreement, only on the enabling legislation, which is mostly confined to changes in tariffs.

We note that the Productivity Commission recommends the public release of the draft treaty text before it is signed into law, and a two-stage process for a robust and independent assessment of the costs and benefits of trade agreements.¹²

In the case of the *DEA*, the process is even less transparent than usual: given that legislative action is not required to bring the *DEA* into force, there will not even be a debate and vote in Parliament.

¹² Productivity Commission, submission no. 5, 'Inquiry into Certain Aspects of the Treaty-Making Process in Australia', Joint Standing Committee on Treaties

This is particularly concerning as the National Interest Analysis (which is not independent, but conducted by DFAT) notes that the *DEA* ‘will establish cutting-edge global benchmarks for trade rules.’¹³ Given this ambitious and far-reaching agenda to set new standards in digital trade, this agreement requires more scrutiny – not less. This includes thorough public consultation and comprehensive, independent impact assessments of the likely economic, social, environmental and health impacts of the new agreement. The *DEA* needs to be thoroughly and independently assessed to determine whether the exceptions to preserve some parts of Australia’s regulatory framework regarding government access to source code in particular circumstances, privacy, and the handling of credit information are sufficient to protect the public interest.

Recommendation 3: The Committee should require a thorough, independent assessment to determine whether the exceptions in *DEA* to preserve Australia’s regulatory and policy flexibility are sufficient to protect the public interest.

Cross-border data flows, location of computing facilities and local presence

The *DEA* prevents the restriction of transfer of cross-border information by electronic means¹⁴; prevents governments from requiring a corporation use or locate computing facilities in their territory as a condition of conducting business in that territory¹⁵; and the *SAFTA* contains a provision that prohibits governments from requiring service suppliers to establish or maintain a ‘representative office or any form of enterprise, or to be a resident, in its territory as a condition for the cross-border supply of a service.’¹⁶

The *DEA* and *SAFTA* contain some exceptions for cross-border data flow and location of computing facilities. Exceptions include government procurement, information held or processed on behalf of government, personal credit information, and data related to measures like health are listed as

¹³ DFAT National Interest Analysis, [8]

¹⁴ *Australia-Singapore Digital Economy Agreement*, Article 23, [https://www.aph.gov.au/Parliamentary Business/Committees/Joint/Treaties/DigitalEconomySingapore/Treaty_being_considered](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/DigitalEconomySingapore/Treaty_being_considered)

¹⁵ *DEA*, Articles 24 and 25

¹⁶ *Singapore-Australia Free Trade Agreement*, Article 7.6, <https://www.dfat.gov.au/trade/agreements/in-force/safta/official-documents/Pages/default>

reservations in SAFTA. The *DEA* also enables the financial regulatory authorities of the Parties to access information processed or stored on computing facilities outside the Party's territory.

Even with these exceptions, the restrictions on regulating cross-border data flows, location of computing facilities and local presence have implications for the ability of governments to regulate and enforce laws, including tax law, and implications for workers' rights. The DFAT National Interest Analysis notes that the *DEA* 'will impose new restrictions on Australia's policy flexibility to impose certain measures to restrict data flows or require data localisation' but that 'the Government considers these restrictions are outweighed by the benefits.'¹⁷

These rules give corporations the right to operate across borders while limiting the ability of workers and the community to obtain justice. If the rights of a worker are violated by an online platform with no local presence, it is unclear how they obtain justice. As the International Trade Union Confederation, the ACTU's global union body, argues: 'Without a local presence of companies, there is no entity to sue and the ability of domestic courts to enforce labour standards, as well as other rights, is fundamentally challenged.'¹⁸

At present, digital platform workers (for example Uber drivers or food delivery workers) find that they have little ability to understand and challenge company decisions and practices. Workers find it difficult to resolve issues due to a lack of a dispute resolution process, lack of contact points and pathways for resolution. These rules prohibiting local presence requirements are likely to entrench these difficulties.

The difficulties of holding digital platform companies without a local presence is highlighted by the Fair Work Ombudsman dropping its legal action against food delivery company Foodora. Foodora Australia Pty Ltd exited Australia in 2018; administrators sold the company's assets resulting in more than 1000 delivery workers only receiving 31% of entitlements owing to them. The Fair Work Ombudsman stated in June 2019 that it had discontinued its legal action against Foodora as it was unlikely the action would result in extra payments for workers or financial penalties against the company.¹⁹

¹⁷ DFAT National Interest Analysis, Australia-Singapore Digital Economy Agreement, [16]

¹⁸ International Trade Union Confederation, <https://www.ituc-csi.org/e-commerce-push-at-wto-undermines-workers>

¹⁹ Anna Patty, 'Fair Work watchdog drops legal case against Foodora', *Sydney Morning Herald*, 21/06/19, <https://www.smh.com.au/business/workplace/fair-work-watchdog-drops-legal-case-against-foodora-20190621-p5202q.html>

These rules mean that governments will not be able to access data for public policy reasons, such as monitoring labour practices. The International Labour Organisation's Global Commission on the Future of Work report *Work for a brighter future* outlines a number of ways that technology can be used to improve work:

...the extraction of knowledge through the use of data mining can assist labour administrations to identify high-risk sectors and improve labour inspection systems; digital technologies such as apps and sensors can make it easier for companies and social partners to monitor working conditions and labour law compliance in supply chains; blockchain technology – which provides transparency and security through encrypted blocks and decentralised databases – could guarantee the payment of minimum wages and facilitate the portability of skills and social protection for migrant workers, or the payment of social security for those working on digital labour platforms.²⁰

Given the Australian Government's move to regulate to stop modern slavery practices, including labour exploitation, in supply chains through the *Modern Slavery Act 2018*, the potential of technology to assist in conducting due diligence and protecting workers in supply chains is huge. But using technology to improve work in this way is only possible if governments retain the ability to regulate the cross-border flow of data, require corporations to have a local presence and store data locally.

Recommendation 4: The Committee should examine whether the *DEA* will constrain the ability of the Australian Government to access and utilise data to conduct due diligence in supply chains.

These rules could also impact on the ability of governments to enforce tax law. As James notes, 'digitalisation has allowed corporations to more easily move labour, inputs, capital and data across borders, making them more able to expand their transfer pricing practices and locate operations in countries with the least regulatory oversight and lowest taxes, exacerbating tax avoidance and evasion and elicit financial flows.'²¹ By enabling the tax avoidance practices of corporations, these rules rob communities of the tax revenue needed to fund public services. The general exemption for tax measures in *SAFTA* has not been updated to reflect the complexities of digital trade and the challenges posed by digital technologies.

²⁰ International Labour Organisation's Global Commission on the Future of Work report *Work for a brighter future*, https://www.ilo.org/wcmsp5/groups/public/-/dgreports/-/cabinet/documents/publication/wcms_662410.pdf pp. 43- 44.

²¹ Deborah James, 'Digital Trade Rules: A disastrous new constitution for the global economy, by and for big tech', Rosa-Luxemburg Stiftung, Brussels (2020), p. 58, <https://www.rosalux.eu/en/article/1742.digital-trade-rules.html>

These rules not only exacerbate the problem of tax havens, but could also lead to the creation of data havens. As Jane Kelsey points out, big tech companies want ‘a guaranteed and unfettered right to collect data and store, transfer, process, use, sell and exploit it anywhere in the world...they want to transfer and store data in their place of choice. That is partly for efficiency, so they can process bulk data without having to duplicate facilities and personnel – but as importantly so they can choose destinations that have the most favourable laws.’²² That means countries that do not regulate the internet and have weak consumer and privacy laws.

Recommendation 5: The Committee should examine the impact of digital trade rules on the ability of the Australian Government to enforce tax law and develop new taxation regulation.

Source code

The *DEA* prohibits governments from requiring the transfer of, or access to, software source code as a condition for the import, distribution, sale or use of software.²³ The DFAT National Interest Analysis claims that exceptions contained in the *DEA* will cover existing and future measures on access to source code for the purposes of a specific examination, investigation or judicial proceeding (for example, for the purposes of an investigation by competition regulators into anti-competitive business practices) or for reasons of national security.’²⁴

The *DEA* does not currently require the disclosure of algorithms²⁵, but does state that if the governments undertake in future agreements to prohibit the transfer of and access to algorithms, then the *DEA* will also extend the rule to the application of algorithms.²⁶

Workers require legal measures to govern data use and algorithmic accountability in the world of work to ensure transparency, data protection and the prevention of discrimination and undue interference. The work of digital platform workers in particular is dictated by complicated algorithms, and workers are not provided with any information about how the algorithm makes

²² Public Services International, ‘Digital trade rules and big tech: surrendering public good to private power’, p.14 https://pop-umbrella.s3.amazonaws.com/uploads/f2bddc3d-c353-4846-a23b-82dec9a9e6d7_2020_-_ASIA_DIG_REPORT_3_1_.pdf

²³ *DEA*, Article 28.

²⁴ DFAT National Interest Analysis, p. 5.

²⁵ ‘An algorithm can be understood as a recipe that involves a series of sequential steps with options and decision points, whereas source code is the language and form by which these instructions are written by people and interpreted by computers.’ – ITUC and New Economics Foundation, ‘Free Trade Agreements, Digital Chapters and the Impact on Labour’, https://www.ituc-csi.org/IMG/pdf/digital_chapters_and_the_impact_on_labour_en.pdf, p. 14.

²⁶ *DEA*, Article 28.5

decisions. Digital platform food delivery riders surveyed by ACTU affiliate the Transport Workers' Union (TWU) and Victorian Trades Hall Council report being penalised by the algorithm for taking time off, reducing their hours, or refusing jobs.²⁷ They reported receiving fewer jobs as a result of being unavailable, and platforms deactivating their accounts as a result of not accepting jobs. Riders questioned the decisions behind how jobs are allocated, saying the companies' decisions and their algorithm are not transparent.²⁸ Similarly, the 'deactivation' – or dismissal - of workers from digital platforms is not transparent. There is an urgent need for the Australian Government to regulate digital platforms to ensure platforms respect certain minimum rights and protections, and that algorithms governing work are transparent and accountable.

Keeping source code and algorithms secret from government also means it would be almost impossible for a government regulator or trade union to expose bias or discrimination in source code. For example, an algorithm used in recruitment that perpetuates gender or racial biases (for example Amazon's hiring tool that systematically discriminated against women applying for technical roles²⁹) or that profiles workers as union activists. Preventing governments from accessing source code and algorithms could also restrict governments from being able to check for company compliance with domestic regulations, for example checking car safety, or the ability to access source code in accounting software to check for tax compliance.

Recommendation 6: The Committee should oppose future restrictions on the regulation of algorithms.

Recommendation 7: The Committee should recommend an independent review of the *DEA* three years after implementation to evaluate the impact prohibitions on restrictions to cross-border data flows, local data storage and local presence, and limits to regulation of source code have on the public interest.

²⁷ Victorian Trades Hall Council submission into the *Inquiry into the Victorian on-demand workforce*, 2019, p. 39 https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/8515/7248/2483/Victorian_Trades_Hall_Council_supplementary_submission.pdf

²⁸ *Ibid*.

²⁹ Reuters, 'Amazon scraps secret AI recruiting tool that showed bias against women', 11/10/2018, <https://www.reuters.com/article/us-amazon-com-jobs-automation-insight/amazon-scraps-secret-ai-recruiting-tool-that-showed-bias-against-women-idUSKCN1MK08G>

Personal information protection

These digital trade provisions have implications for the privacy of workers and the broader community. The *DEA* states that ‘each Party shall adopt or maintain a legal framework that provides for the protection of the personal information of persons who conduct or engage in electronic transactions’³⁰, however there is no common mandatory standard of privacy protection. Each government is simply encouraged to ‘take into account the principles and guidelines of relevant international bodies’³¹ – meaning data will be subject to different protections in different jurisdictions.

The DFAT National Interest Assessment claims that exceptions in the *DEA* preserve Australia’s ability to regulate in the interest of privacy, and that commitments in the *DEA* will not affect Australia’s regulatory framework under the *Privacy Act 1988*. The Australian Competition and Consumer Commission (ACCC) *Digital Platforms Inquiry* report³², released in 2019, made a number of recommendations for reform to bring Australia’s law in pace with the emerging digital economy, including strengthening Australia’s privacy laws. Once the *DEA* comes in to force it could limit the ability of the Australian Government to reform privacy laws.

The inability of governments to require data to be stored locally also has implications for workers’ privacy, as new technologies generate large amounts of data on workers.³³ New technology also brings with it increasing risk of worker surveillance. Many digital platform workers are subject to constant surveillance while working, and in 2015 it was reported that Uber had updated its privacy policy to allow the company to track the location of users even when they were not using the app or when their phones are turned off, and to pass data to third parties.³⁴ The trend of workplace surveillance has accelerated since the start of the COVID-19 pandemic and the rapid shift to ‘work from home’ arrangements for many workers. The ABC reported a 300% increase in sales of software that monitors employees working remotely in the first two months of the pandemic.³⁵

³⁰ *DEA*, Article 17.2

³¹ *DEA*, Article 17.2

³² ACCC, ‘Digital Platforms Inquiry’, 26/07/2019, <https://www.accc.gov.au/focus-areas/inquiries-ongoing/digital-platforms-inquiry/final-report-executive-summary>

³³ International Labour Organisation’s Global Commission on the Future of Work report *Work for a brighter future*, p. 44.

³⁴ New Uber Policy tracks users even when phone turned off, *Geelong Advertiser*, 30 June 2015

³⁵ ABC news, ‘Employee monitoring software surges as companies send staff home’, 22/05/20 <https://www.abc.net.au/news/2020-05-22/working-from-home-employee-monitoring-software-boom-coronavirus/12258198>

The gathering and analysis of data about workers through constant surveillance allows for the intensification of work³⁶ through targets and the reduction of employees through automation of jobs and processes. As the ITUC report 'Free Trade Agreements, Digital Chapters and the Impact on Labour' notes, 'The poster child for work intensification is Amazon, which through compulsive monitoring and stringent targets, ensures that all its workers' activities are tracked, recorded, and assessed to ensure they meet exacting targets at all times.'³⁷

The International Labour Organisation's Global Commission on the Future of Work report *Work for a brighter future* argues that 'the exercise of algorithmic management, surveillance and control, through sensors, wearables and other forms of monitoring, needs to be regulated to protect the dignity of workers.'³⁸

There is the need to strengthen our privacy legislation in line with the development of the digital economy. Workers need to be informed and consulted regarding data collected on them, have access to their own data, and there needs to be regulation to place limits on the collection of data that might discriminate against workers or trade union activity, for instance the collection of data on union membership.

Recommendation 8: The Committee should examine whether the *DEA* would limit the ability of the Australian Government to strengthen privacy laws to keep pace with developments in the digital economy

Recommendation 9: The Committee should examine the implications of the *DEA* on workers' privacy

³⁶ New Economics Foundation, 'Who watches the workers? Power and accountability in the digital economy', https://neweconomics.org/uploads/files/Data_and_work_FINAL.pdf, p. 11.

³⁷ ITUC and New Economics Foundation, 'Free Trade Agreements, Digital Chapters and the Impact on Labour', https://www.ituc-csi.org/IMG/pdf/digital_chapters_and_the_impact_on_labour_en.pdf, p. 28.

³⁸ International Labour Organisation's Global Commission on the Future of Work report *Work for a brighter future*, https://www.ilo.org/wcmsp5/groups/public/-dgreports/-cabinet/documents/publication/wcms_662410.pdf p. 43.

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