

House of Representatives Standing Committee on Employment, Education and Training

Digital Transformation of Workplaces Inquiry

Finance Sector Union Submission

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Finance Sector Union

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This submission supports the submission of the Australian Council of Trade Unions and was prepared by Nicole McPherson – National Assistant Secretary and Alex Cousner – Campaign Manager.

This submission draws and expands on the Finance Sector Union’s submission to the Senate Select Committee on Adopting Artificial Intelligence.

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About the FSU

The FSU is a registered employee organisation representing approximately 22,000 members across the banking and finance sector throughout Australia. FSU members work in banking, insurance, superannuation, financial planning and finance. Our membership is predominately female, many of whom are engaged in part-time and casual employment.

The FSU is a democratic organisation with representative governance by elected officials and volunteer members. The FSU is a member-led organisation in which rank and file members are elected to honorary official positions to governing bodies within the Union. This includes the National Congress which is the supreme governing body of the Union.

National Congress has the management and control of the affairs of the Union and is comprised of predominately volunteer members. These members are elected by the wider membership to represent their interests. They are not paid officials.

The FSU is proud of its long history representing members to achieve better wages and fairer conditions.

Our members are committed to higher integrity in the finance sector and see their role as advocates for a better industry.

The finance sector is at the forefront of technological change, and our members view this as an opportunity to lead in the ethical adoption of AI in a way that benefits workers and our community. In February this year, the FSU National Executive considered the impact on workers in the finance sector and developed the Union's position on AI which we will discuss in this submission.

Introduction

AI is used widely in the finance sector and the adoption of AI continues to increase. The primary position of the FSU is that the benefits of AI should be returned to workers and their families. This might occur through time or through financial benefits. The development, enhancement and proliferation of AI and machine learning models should not under any circumstances lead to those same benefits being returned to businesses without workers being the first to benefit.

The FSU has seen a significant increase in the utilisation of AI technologies in the finance sector. In many cases, AI companies are preparing and selling these technologies to employers on the basis of the cost savings to business measured in human worker units. This trend devalues workers and fails to consider the adoption of AI in a way that centres workers and ethical outcomes.

Dr John Keynes in his seminal works, *A Tract on Monetary Reform* and *Treaties of Money* wrote that the technological advancement and productivity gains of the 1920s would shortly lead to workers enjoying shorter working weeks and other social dividends. It is more than 100 years since this was first proposed and the technology being considered is far more advanced than was even science fiction at the time. The workers of Australia are still waiting for those dividends and shorter working weeks.

We stand on the precipice of an opportunity for the Australian Government to fulfill those long overdue promises through the regulation and social distribution of the benefits of this generation's emerging and disruptive technology.

The role of AI in the finance sector

AI technologies already play a significant role in the finance sector.

In preparing this submission, FSU conducted interviews with FSU members across the finance sector. One of the major themes that came from the interviews was that workers are unaware of precisely how these technologies are being used – it was clear that employers do not advise workers (or customers) of how AI is being used. One member reported “[employer] has not clarified who is liable if a complaint captured and summarised by AI does not meet regulatory standards, who is liable for any regulatory breach. We have also not been told if this is the only area in which AI is being used, or how our data is being used”.

In addition, there is a lack of transparency from the major employers about what programs even use AI technology and what worker data is being captured and how it is being used. One FSU member reported “AI is a fallible and unreliable tool prone to disinformation and discrimination. Finance is an industry that cannot afford the vagaries of such a "black box" technology employers don't even begin to understand the operation or impact of”.

Despite this, we are aware of extensive use of AI technologies by finance sector employers which is growing rapidly and today includes:

- Compliance – risk assessment, fraud detection, template creation;
- Lending – credit scoring and assessment, customer interactions;
- Customer service and account management – handling routine enquiries and complaints, making changes to customer accounts, providing financial advice;
- Claims management – claims processing, underwriting, insurance fraud detection;
- Staff management – shift rostering, surveillance, responding to employee questions, and productivity management;
- Investments – analytics and reporting

These uses are expanding. We are seeing employers planning to have AI-based technologies write computer code, draft legal documents, and analyse data to determine the quality and sentiment of engagements with customers (and potentially staff) in the near future.

FSU believes that there must be a higher obligation on employers to educate workers and to provide transparency about what data is being held and how it is being used. Another leader stated the following:

Employees and citizens deserve the right to own their data and know how it is being used by corporations.

Implementation of new technologies in an industry should automatically trigger new bargaining between an employer and workers to determine its use. We deserve the right to know how AI makes decisions to ensure it is not acting on discriminating qualifiers. We need strong data rights laws with severe penalties to protect people from data exploitation and commodification.

Impacts of AI in the Finance Sector

Benefits of AI

The increasing adoption of AI will change the nature of work in the finance sector which has the potential to create technology and specialist roles in using AI. There is also the potential for AI to deal with the more mundane elements of work, freeing up workers to spend time on the more complex and interesting tasks.

There are efficiency gains to be had from the use of AI, but in our political and economic environment, the challenge will be to ensure that workers benefit from those gains and they do not just further increase corporate profits.

Increasing use of AI also has the potential to bring about improvements in how we do our work. From better delivery of training to more efficient work systems, AI can assist us to improve flexibility and efficiency. Another leader stated during their interview “I am in Credit Assessment and our current process will change by end of year. We will be moving onto a no simpler platform where the computer will do most of the tasks and this will greatly reduce the time it takes to undertake assessments. “FSU sees huge potential for workers to reap the benefits that can come from shorter processing times, the ability to deal with large data sets quickly and the efficiency that can flow from automated process. The Union wants its members to be able to benefit from these gains.

Those promises made to workers about a future with less work, and more productivity can be realised without compromising on the values of transparency and community that are embedded in the foundation of our Commonwealth.

Job losses due to automation

It is clear that as more roles that are currently performed by AI there will be a shifting demand for the types of roles that are required to be performed by humans. While there is some discussion that AI will create more roles in technology, it is unlikely that the people from the roles replaced by AI will be able to move into these newly created roles.

When we look at the roles in the finance sector which are being displaced by AI or are susceptible to AI replacement, they are diverse and not limited to entry-level positions. We are currently seeing AI performing work in complaints handling, drafting legal documents and managing contact centre

workflows. The types of work that are impacted by AI in our sector are increasing daily and we are currently seeing no limits to what sort of work is able to be performed by AI.

At one large finance employer, members have reported that AI is currently being used for completing internal loan registration requirements, reading and analysing internal documents and then inputting data to Government systems, and completing transactions to charge fees. AI is also being used to complete simple consumer loan assessments.

As the technology continues to develop, we are seeing the emergence of close to end-to-end management of processes by AI. Some of these processes are those identified in the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. It is particularly concerning to the FSU that processes like the assessment of loan applications might be performed by AI when the technology is still developing. When this technology leads to job losses, the finance sector will be losing people with skills that are vital to ensuring that credit is written ethically and in a way that supports our community. Key to the recommendations of the Royal Commission was having robust processes within a culture of compliance overseen by ethical finance workers. The increasing prevalence of AI in these processes risks exposing the finance sector, once again, to the misconduct revealed in the Royal Commission.

FSU members described feeling “scared”, “worried”, “uncomfortable” and “nervous” about how AI will impact their roles. Particularly in the context where there is no regulation over the replacement of jobs by AI, members are concerned that there will inevitably be substantial job losses.

It is also clear that certain categories of jobs are far more susceptible to the immediate impacts of AI. These tend to be roles with relatively lower education and training requirements. This means that the impacts of AI may be disproportionately felt by people with particular education and experience levels, who may find it more difficult to obtain other employment. There is also a risk that these impacts will be felt more by people of lower socioeconomic groups, worsening inequality.

Currently there are no obligations on employers to plan for which roles will be displaced by AI and to communicate that to workers. The FSU is aware that many finance sector employers have plans for the introduction of AI along with forecasts for how this will impact on workers. Employers are not sharing this information with workers or the Union, which deprives workers of the ability to plan for their future including undertaking any retraining.

By the time that employers advise workers that their roles are no longer required, it is too late for workers to meaningfully retrain to retain employment at their employer and most often they are retrenched.

Health and Safety

FSU is concerned about the use of AI in the process of performance objective setting and monitoring. The finance sector generally is one that is highly regulated and has a significant compliance culture baked into it. There has, however, always been a strong focus on sales, and seeking profit in the sector. This led to the poor behaviour by the banks and other finance employers that was exposed through the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry in 2018.

Despite this, the sector remains driven by performance metrics that are aligned to the sales targets of the employers.

One thing that we know the large language model and assessment tools are good at handling is quantitative data that can then be compared to the relevant metrics. This is, on its face, a good thing for assessing the performance of workers. However, this approach misses the qualitative aspect of the performance management process and can lead to unfair scrutiny or even action being taken against workers on this basis.

One of the psychosocial hazards that we often see manifest in the workplace is that of high workload demands and the stress that can flow from workplaces with unfair and unreasonable work demands.

One FSU member stated that “Algorithms can never understand or interpret the unspoken, unquantifiable intricacies of being a person, and as such will always be flawed, unreliable tools easily turned to harm in the wrong or incompetent hands”.

FSU is concerned that the utilisation of AI technologies for the purpose of assessing the workload and output of workers can lead to unfair and unreasonable work demands. When this is layered with the lack of qualitative assessment measures, this can create a significant issue for workers and can exacerbate the hazard that high workload and work demands can present for workers in the sector.

Many jobs currently in the sector were not designed with AI and algorithms in mind. Accordingly, there is a major issue that work in the sector is not designed to work with them without creating further health and safety hazards.

These hazards may include lack of role clarity, workloads either high or low and the possibility of customer aggression toward staff. This may be the case depending on the quality of work that can be performed by the AI algorithms and the need for workers to then contact customers for information that may have already been provided or to deliver decisions that may be upsetting. This is a hazard that is largely unconsidered in current risk assessments.

FSU has observed a general unwillingness on the part of the major employers in the sector to consider job design and undertake risk assessment on the processes of work, if and when they change. The FSU has not yet seen a risk assessment from any finance employer on AI and is not aware of any finance employer consulting workers on the development of a risk assessment on AI.

Wage setting

There are significant issues within the finance sector relating to the process of setting wages and the use of proprietary data and algorithms to make decisions about rates of pay. The use of information from organisations such as AON, Mercer, Hays and others means that workers are not able to get access to information about how and why decisions about pay were made.

Many employers in the finance sector will make declarations about where they wish to be placed within the wages market for a particular job, however, do not produce evidence and data that would allow workers and the Union to verify this position. Some employers have clauses in their enterprise agreements that commit them to internal pay equity, but it is impossible for workers and the FSU to verify their compliance with this obligation when all of their pay data is confidential.

The issue of pay ets raised regularly with workers during negotiations for enterprise agreements and the prevailing answer from employers that cannot be provided as it is proprietary. This creates a significant impediment for members to be able to determine whether they are being paid appropriately when compared to the market. FSU holds the view that these pay practices contribute to gender pay issues as well as discriminatory pay practices.

These black box AI algorithms and the lack of auditability of their outcomes highlights an interesting issue about the role of the modern award and the minimum rates of pay contained within them.

The classification structure and minimum rates of pay contained within the modern award are out of step with the practices of the sector and do not reflect contemporary jobs that make up workers who should be covered by the safety net.

Many of the major employers within the sector pay above the rates of pay in the modern award, yet it is impossible for the FSU to determine the extent to which pay exceeds the award rates. Employers are then able to make submissions to the Fair Work Commission regarding the better off overall test that their rates of pay are such that it is not possible for workers to fall below the minimum rates contained within the award.

Without a relevant comparator in the modern award, the value of the better off overall test is diminished and we believe that the withholding of relevant pay information from workers contributes significantly to this lack of ability to develop an adequate comparative. FSU believes that the process of four yearly review, of the modern awards should be treated with greater significance by the Fair Work Commission and substantially updated to match the contemporary practices of the sector.

This issue within the finance sector (and likely many others) is exacerbated by the growing prevalence of AI in setting pay rates. There is an existing issue with the opacity of pay rates and pay setting processes within the sector, and this will only worsen as the role of AI in these processes increases.

Monitoring and Surveillance

Employer surveillance and monitoring of workers is common in the finance sector. FSU members have extensive experience with their employers monitoring their work including:

- log on and log off times;
- times spent on calls and other tasks like responding emails;
- recording of all internal and external interactions; and
- key strokes and other methods of activity tracking.

Increasingly, AI is able to process large amounts of data gained through worker surveillance to draw conclusions about workers including their productivity, quality of their work, and their sentiment towards the employer. AI makes worker surveillance relatively easier, with data able to be collected and insights gained with little effort.

FSU members are deeply concerned about the growing use of monitoring and surveillance by employers. FSU members who have been in the finance sector for a long period of time express that they acknowledge that there is a certain level of surveillance that employers will undertake, for example having access to emails, and recording phone calls for regulatory purposes. However, there has been a steady increase in both the types of surveillance being undertaken and the conclusions drawn from it.

The FSU considers the purpose of the surveillance as critical in determining whether it is appropriate. Surveillance and monitoring for the purposes of ensuring legal compliance and ethical conduct are considered part of the finance sector today by our members. However, surveillance and monitoring purely for the purposes of determining worker productivity and the quality of their work is not acceptable.

The data captured by monitoring and surveillance technology, absent appropriate worker engagement and context does not, of itself, tell a complete story. Rather it is a blunt instrument that has the ability to infer findings rather than confirm them. For example, an employer monitoring key strokes may use that data as a proxy for worker productivity. This is a poor basis for disciplinary action and its ongoing use in the finance sector not only proves to be a hazard to the wellbeing of workers but is a deeply flawed basis for decision making.

Currently, worker surveillance and monitoring is performed entirely without worker consent. Workers do not know how they are being monitored, what information is being collected or how it is being used or disclosed. FSU members are concerned that substantially all forms of surveillance can be conducted without their consent or knowledge. The FSU is seeking regulation to ensure that workers are advised of any monitoring or surveillance of them, and that their consent is required for monitoring and surveillance beyond what is required by law.

Inadequate regulation

The development and use of AI has exceeded the ability of our current regulatory frameworks to govern it. Much of our regulation does not contemplate a situation where AI acts as an advisor and decision-maker, and the pace at which these technologies are being developed will pose an ongoing challenge for regulation to contain its use.

The FSU is concerned with the use of AI in the surveillance and management of workers. Our industrial relations laws do not consider that decisions made in respect of a worker's employment could be made by AI. This has consequences across all areas of a worker's employment.

In the finance sector, this is particularly evident where a major change giving rise to consultation obligations is made using AI which cannot be fully interrogated. In this circumstance, there is a serious risk that workers will not be able to obtain a full understanding of the proposed change in order for them to properly engage in consultation. During an interview one union leader stated that "I am uncomfortable, the use of AI is running unchecked, without any consideration to what may come from the use of it, to work, personal information".

These issues are compounded where decisions are made regarding disciplinary action against a worker, or the termination of a worker's employment. The protections that workers have against unfair dismissal and adverse action are challenged where AI is used by employers in making these decisions. Where current legal protections require a contemplation of what was in the mind of a decision-maker, this is not possible where the decision was either made by AI, or significantly informed by AI.

It is clear that there needs to be legislative reform to address the impacts of AI on working people. At a minimum, the FSU believes that no decisions with adverse consequences on working people should be made using AI. It is essential that where decisions are being made on the lives of workers, those decisions are made by human beings in a way that workers can understand, interrogate and challenge.

Specific recommendations for resolving the issues identified within this submission are identified in the recommendations section.

Right to an Explanation

Based on its use in Europe, the right to an explanation is the fundamental right to receive an auditable, criticisable explanation from an organisation such as an employer where AI technology is in the decision-making process.

Because of the limitations of proprietary software and the reluctance on behalf of software companies to make their algorithms open source, there is a large problem for workers interacting with these systems to ensure that they are able to get auditable outcomes from the process.

This can include algorithms that are designed to assist in hiring decisions, to make decisions about rostering for staff or decisions about compliance against performance metrics and therefore performance management and termination of employment.

There must be a way for workers to get access to the information that was used to make a decision regarding their employment and to be able to audit how it was used in the decision, if only as a development opportunity, but further, to be able to access their rights in unfair or unlawful dismissal.

Fundamentally the right to an explanation is the right for workers to access this kind of information, and the obligation on employers and the companies building these programs to either show how the decision was made or build a proxy for the decision being made through the algorithm such that it can be relied on for legal purposes and development in the workplace.

FSU sees this as critical to the ethical, safe and mutually advantageous process of adopting AI technologies in the workplace.

Recommendations

The Finance Sector Union makes the following recommendations:

1. That legislation be adopted to ensure that the productivity and capacity gains from the introduction of AI be shared between workers and employers through measures including pay increases and shorter working weeks.
2. That the Government host a series of forums to get a more complete understanding of the ways employers are intending to introduce and adopt AI technology in their workplaces and the impact on workers.
3. That the Government develop and pass right to an explanation legislation based on the European model.
4. That the Government should take an active role in monitoring the use of AI technologies as it relates to the hiring and promotion opportunities within large organisations such as the big four banks to ensure that they are not used to exacerbate the gender pay gap or to limit promotion opportunities for minority workers.
5. That the Government undertake a review of the Fair Work Act 2009 to identify where AI decision making can be utilised in processes described in the Act and how employer liability for those decision can be maintained through the adoption of AI.
6. That there be a moratorium on job losses due to AI for a period of three years to enable employers to identify at-risk roles, and workers to retrain to perform roles that will not be replaced by AI.
7. Review of the Banking Finance and Insurance Award 2020 to align it more directly to the practices of the sector including accurate and transparent pay banding.

The FSU is committed to working with Government, employers, civil society and our community to ensure the ethical use of AI.