

INQUIRY INTO IMPACT OF COMMONWEALTH WORKCHOICES LEGISLATION

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Theme:

Summary



SHOP, DISTRIBUTIVE AND ALLIED EMPLOYEES' ASSOCIATION, NEW SOUTH WALES BRANCH

**Legislative Council
Standing Committee on Social Issues**

**Inquiry into the Impact of the
Commonwealth WorkChoices Legislation**

SUPPLEMENTARY SUBMISSION

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1. EXECUTIVE SUMMARY

- 1.0.1 The SDA makes this supplementary submission to assist the Committee in its deliberations and, in particular, to address matters of significant public interest which have transpired subsequent to the closing of submissions, to clarify some matters raised in its primary submission and to provide further recent examples of the impact of the Commonwealth WorkChoices legislation on the most vulnerable classes of NSW workers.
- 1.0.2 Due to considerable publicity surrounding the infamous Spotlight Australian Workplace Agreement, the SDA submits further analysis of that particular Agreement. This supplementary submission provides:
- ◆ A detailed comparison of the weekly wages payable under the Spotlight AWA in comparison to the *Shop Employees' (State) Award (NSW)* for different employment categories and roster patterns; and
 - ◆ A rebuttal of the misleading claims made by the Federal Government regarding the creation of 38 new jobs in Western Sydney attributable to the introduction of the WorkChoices legislation.
- 1.0.3 A recently published Organisation for Economic Co-operation and Development (OECD) report, "*OECD Employment Outlook 2006 – Boosting Jobs and Incomes*", reinforces the SDA's primary submission that the Commonwealth Government's economic foundation for WorkChoices is flawed. The report comprehensively debunks the Federal Government's assertion that these extreme laws are likely to provide any significant employment benefits for Australian economy. The OECD report makes the following findings:
- ◆ There is no significant correlation between unemployment and comprehensive employment protection legislation (unfair dismissal laws);
 - ◆ The level of the minimum wage has no significant direct impact on unemployment; and
 - ◆ Where wage bargaining is highly centralised (as opposed to individual bargaining arrangements such as Australian Workplace Agreements) this significantly *reduces* unemployment.
- 1.0.4 The WorkChoices transitional arrangements for NSW award employees, relegated to the federal jurisdiction by virtue of their employment by constitutional corporations, described in the legislation as Notional Agreements Preserving State Awards are complex and ambiguous. As a result, whilst the SDA maintains the clear effect of these arrangements is to gut, freeze, export and dispose of existing minimum NSW award conditions within three years, it is debatable whether the current regulations remove some of the existing award conditions suggested in the SDA submission. The Regulations' treatment of the term "prohibited content" in two different contexts may be interpreted to suggest that much of the content which is prohibited in workplace agreements made

under the legislation is not, however, currently prohibited for the purposes of Notional Agreements Preserving State Awards under the same legislation.

- 1.0.5 WorkChoices operates to strip away the unfair dismissal rights of NSW workers. For many NSW workers, no alternative legal avenue is now available to remedy the injustice of harsh, unjust or unreasonable termination. For others the pathway to justice is prohibitively complex and costly. The SDA is currently investigating and pursuing three of such matters, which would have been promptly, fairly and efficiently handled by the NSW Industrial Relations Commission as unfair dismissal claims without the interference of the WorkChoices legislation. These matters, which relate to dismissal due to alleged unlawful grounds or freedom of association breaches, highlight the gross prejudice of the Commonwealth's legislation against employees without the means and resources to defend their interests.

2. SPOTLIGHT AUSTRALIAN WORKPLACE AGREEMENT

- 2.0.1 On 22 May 2006, the SDA was provided a copy of one of the first Australian Workplace Agreements drafted and proposed under the Commonwealth WorkChoices legislation – the “*Spotlight Pty Ltd Australian Workplace Agreement – Retail Non-Salary*” (the “Spotlight AWA”). The Spotlight AWA appears to comply with the Federal Government’s minimum standards for the making of workplace agreements under WorkChoices.
- 2.0.2 A complete copy of the Agreement in conjunction with a statement made by Mrs Annette Harris, an employee of Spotlight Coffs Harbour, is attached at Annexure “J” of the SDA submission of 26 May 2006.
- 2.0.3 Since that time, there has been considerable public debate surrounding the significance of this Agreement. The SDA submits that a number of matters warrant the Committee’s attention arising from this debate, including:
- ◆ A detailed comparison of the weekly wages payable under the Spotlight AWA in comparison to the *Shop Employees’ (State) Award (NSW)* for different employment categories and roster patterns; and
 - ◆ A rebuttal of misleading claims made by the Federal Government regarding the creation of 38 new jobs in Western Sydney due to the introduction of the WorkChoices legislation.

2.1 THE REDUCTION IN EARNINGS

- 2.1.1 The SDA surveyed a random selection of its members working in Spotlight stores on Monday, 19 June 2006. All members who participated in the survey currently remain employed on terms and conditions in accordance with the *Shop Employees’ (State) Award (NSW)*.
- 2.1.2 In each case surveyed the Spotlight employee would be worse off under the terms and conditions of the Spotlight AWA in comparison to their existing award conditions of employment for their current employment status and their pattern of working hours over the last roster cycle (week or fortnight). In all instances the employees surveyed were women.
- 2.1.3 Attached at Annexure “A” are the spreadsheet calculations for three such cases based on hours worked over the last week / fortnight.
- 2.1.4 In the first case, a full-time Spotlight employee working in Western Sydney would be:
- **\$20.57** per week worse off on the Spotlight AWA;
 - Earn **4.14%** less per annum on the Spotlight AWA; and
 - Earn **\$1,329.66** less over the next 12 months working the current roster on the Spotlight AWA.

2.1.5 In the second case, a part-time Spotlight employee working in Western Sydney would be:

- **\$17.84** per week worse off on the Spotlight AWA;
- Earn **4.47%** less per annum on the Spotlight AWA; and
- Earn **\$1,119.06** less over the next 12 months working the current roster on the Spotlight AWA.

2.1.6 In the third case, a part-time Spotlight employee working in regional NSW would be:

- **\$71.52** per week worse off on the Spotlight AWA;
- Earn **16.85%** less per annum on the Spotlight AWA; and
- Earn **\$3,530.82** less over the next 12 months working the current roster on the Spotlight AWA.

2.1.7 The Spotlight AWA also provides the employer with the unfettered discretion to change and / or reduce part-time hours of work. No minimum weekly hours of work are guaranteed for part-time employment under the terms of the AWA in contrast to the *Shop Employees' (State) Award* which provides a minimum 12 hours per week for part-time employees working in general shops.

2.1.8 Clause 8.5 of the Spotlight AWA provides:

"Part time employees

8.5 You will normally work less than an average, over a 6 week cycle, of 38 hours per week provided that at times you may be required to work up to or more than 38 hours in a week."

2.1.9 Clause 4(A)(b) of the Shop Employees' (State) Award provides:

"4. Part-time Employees

(A) General Shops –

- (b) Ordinary hours of work, exclusive of meal times, shall be the same as those prescribed for full-time employees but shall not in any case be less than three hours work per day nor less than 12 hours work per week nor more than 30 hours work per week."*

2.1.10 It is clear that the terms of the Spotlight AWA provide the employer with the flexibility to reduce a part-time employee's hours of work to a single three hour shift per six week cycle.

2.1.11 Without touching upon further economic losses caused by the removal of conditions of employment such as rest pauses, penalty rates, annual leave loading and the consequential reduction in superannuation earnings, an employee receiving minimum part-time hours under the Award would suffer the following reduction in earnings under the terms of the Spotlight AWA if applied to its maximum extent:

	Shop Employees' (State) Award	Spotlight AWA
Minimum part-time hours	12 hours per week @ \$14.28 per hour x 6 weeks	3 hours (once in the 6 week cycle) @ \$14.30 per hour
Earnings over 6 weeks	\$1,028.16	\$42.90
Average weekly wage	\$171.36	\$7.15
Loss of earnings	-	- \$164.21

2.1.12 The Spotlight AWA provides such an extraordinary degree of “downward flexibility” that any part-time Spotlight employee may suffer a \$164.21 wage cut per week compared to the minimum enforceable conditions of the Award based solely on the minimum ordinary hourly rates of each instrument.

2.1.13 The SDA submits that the Spotlight AWA depicts the absurdity of the extreme and punitive deregulation implemented by the Commonwealth’s legislation, as the figures above demonstrate.

2.1.14 The Committee should also note that the Spotlight AWA provides no monetary compensation for the loss of the award entitlement to paid 10 minute rest pauses after 4 hours work. Spotlight employees working under the AWA may be required to work through times when they were previously entitled to take a paid break. As such, the Spotlight AWA extracts the following additional monetary benefit from employees bound by its terms:

Employment Status	Hours	Paid Rest Breaks per week	Paid Rest Breaks per annum (excepting periods of A/L and S/L)	Monetary entitlement foregone (at ordinary rates of pay)	Monetary entitlement foregone (at overtime rates of pay)
Full-time	5 shifts per week @ 7.6 hours per shift	5 x 10 minutes	5 x 46 x 10 minutes = 38.3 hours	- \$547.40 per annum	- \$821.10 per annum
Part-time	5 shifts per week @ 6 hours per shift	5 x 10 minutes	5 x 46 x 10 minutes = 38.3 hours	- \$547.40 per annum	- \$821.10 per annum
	4 shifts per week @ 5 hours per shift	4 x 10 minutes	4 x 46 x 10 minutes = 30.7 hours	- \$437.92 per annum	- \$656.88 per annum
	3 shifts per week @ 5 hours per shift	3 x 10 minutes	3 x 46 x 10 minutes = 23 hours	- \$328.44 per annum	- \$492.66 per annum

2.1.15 By removing the entitlement to a paid ten minute rest pause, the Spotlight AWA requires that every full-time and every part-time employees working 5 shifts per week of more than 4 hours each week is required to perform work for an additional week (38 hours) every year without any monetary compensation.

2.1.16 The SDA submits that the preceding analysis reveals that the Spotlight AWA has been crafted to remove and reduce fair and decent working conditions of the low paid, women and the workers of Western Sydney and regional New South Wales.

2.2 CLAIMS OF INCREASED EMPLOYMENT

2.2.1 On 30 May 2006, the Prime Minister John Howard claimed in Parliament:

“Spotlight has, I am told, opened a new store at Mount Druitt in Western Sydney. The unemployment rate in Mount Druitt is over 10 per cent. I am further informed that 38 of the 40 new staff employed on AWAs in Spotlight at Mount Druitt in Western Sydney were previously unemployed. In other words, there are 38 people who are better off ... As a result of our policy, 38 people in Mount Druitt have been given the chance of a job and they are \$338 a week better off.”¹

2.2.2 The SDA rejects this claim as false and misleading.

2.2.3 No new jobs have been created as a result of the Federal Government’s policy.

2.2.4 The new store in Mount Druitt that the Federal Government points to as creating new jobs was planned, and applications made for its approval, before the announcement of the WorkChoices legislation last year.

2.2.5 Blacktown City Council documents, attached at Annexure “B”, obtained under freedom of information demonstrate that the application for the new Spotlight Mount Druitt store was made on 27 September 2005 by Progetto Design Pty Ltd and lodged with Blacktown City Council on Thursday, 6 October 2005. The Prime Minister announced the WorkChoices package on Sunday, 9 October 2005, three days after the application for the Spotlight Mount Druitt store was lodged. The actual WorkChoices legislation was not introduced into Parliament until Wednesday, 2 November 2005, a further 27 days after the application for the Spotlight Mount Druitt store was lodged.

2.2.6 The business decision made by Spotlight to open for trade at Mount Druitt not only preceded the commencement of the WorkChoices legislation on 27 March 2006 but even preceded the Federal Government’s release of the details of the legislation on 9 October 2005.

2.2.7 The Prime Minister’s assertion that the Mount Druitt Spotlight jobs were a direct result of the Federal Government’s policy simply does not stand up to scrutiny.

2.2.8 The SDA submits that the capacity to reduce the wages and conditions of Spotlight Mount Druitt employees under WorkChoices was simply a windfall for the employer bestowed by the Federal Government.

2.2.9 In contrast, the SDA can point to over 500 jobs in Mount Druitt in union shops with fair wages and conditions (see attached Annexure “C”). Providing employment opportunities does not and should not depend upon reducing wages and conditions of employment.

¹ House of Representatives Hansard, Tuesday 30 May 2006, page 8.

3. OECD REPORT

3.0.1 On 13 June 2006 the Organisation for Economic Co-operation and Development (OECD) released a report, *“OECD Employment Outlook 2006 – Boosting Jobs and Incomes”*. The report rebuffs the Federal Government’s employment case for the WorkChoices reforms.

3.0.2 On 2 November 2005, the Minister for Workplace Relations, the Hon. Kevin Andrews MP, said:

*“WorkChoices is not simply about raising the living standards of those Australians in jobs. It is also about getting more Australians into jobs ...”*²

3.0.3 The Prime Minister has also ascribed to the theory that WorkChoices ensures more Australians have the opportunity to be employed:

*“Like my friend Tony Blair, I believe fairness in the workplace starts with the chance of a job.”*³

3.0.4 In essence the Federal Government has consistently asserted that the WorkChoices legislation is necessary to further reduce unemployment.

3.0.5 The OECD has found, however, that employment protection legislation, fair and reasonable minimum wages and highly centralised wage bargaining do not have a significant negative impact on employment. The OECD report challenges the economic foundation of the Federal Government’s WorkChoices reforms, which abolish employment protection legislation for all Australians, implicitly discourage further minimum wage increases and encourage individual bargaining in the guise of Australian Workplace Agreements at the expense of collective bargaining. The SDA, therefore, enthusiastically conveys these findings from the OECD report as detailed by Ross Gittins in the Sydney Morning Herald on Saturday, 17 June 2006:

“But with the publication of its annual Employment Outlook this week, [the OECD has] been obliged to reformulate its policy recommendations following a new empirical analysis that takes into account “recent advances in both theory and empirical methodology”.

The new study examines the performance of 20 OECD economies over the 20 years to 2003. It finds that changes in policies and labour-market institutions explain almost two-thirds of the changes in unemployment that aren’t explained merely by the ups and downs of the business cycle.

Its first concession is that it can find no significant correlation between unemployment and the stringency of employment protection legislation - which, in our case, took the form of the unfair dismissal laws largely dismantled by WorkChoices.

² Hon Kevin Andrews MP, Commonwealth Parliamentary Debates, 2/11/05, p 12.

³ House of Representatives Hansard, Tuesday 30 May 2006, page 8.

It says recent developments in economic theory predict that lay-off regulations tend to affect the distribution of unemployment (that is, who cops a bullet) rather than its level.

Its next jaw-dropper is that it can identify "no significant direct impact of the level of the minimum wage on unemployment".

If so, you wonder how the efforts of our new Fair Pay Commission are going to make much difference to joblessness, despite its undoubted ability to cause minimum wages to grow by less than they otherwise would have ...

If those findings surprise you, wait till you hear this. The study finds that, where wage bargaining is highly centralised, this significantly reduces unemployment.

Come to think of it, that finding's consistent with our own experience. In the early years of the Hawke government's Accord with the union movement, real wages declined and unemployment fell sharply.

Under the Howard Government's anti-union approach to wage fixing, real wages have grown steadily, but progress in reducing unemployment was slow.

But if so many of Mr Howard's hobby horses don't help to reduce unemployment, what does?"⁴

3.0.6 The SDA supports the principle that Government has a responsibility to promote policies and frame laws that improve the opportunities for the unemployed to find productive and fulfilling work. Nevertheless, it submits that such policies should not be pursued at the expense of fair and decent wages and conditions of employment. Fair and decent labour laws do not need to be sacrificed at the altar of economic productivity and increased employment. As detailed in the OECD report there is no credible economic evidence to support the Federal Government's conviction that both cannot be simultaneously accommodated.

3.0.7 The Federal Government's flimsy economic arguments in support of the reforms have been debunked. Mr Gittins, once more, eloquently puts the case:

"In particular, don't fall for the laughable proposition that the introduction of Australian Workplace Agreements (which in nine years have spread to just 2.5 per cent of employees) accounts for most of the gains we've enjoyed."⁵

⁴ "Labour Market Reform's Only a Small part of the Story", SMH, Saturday 17 June 2006.

⁵ Ibid

4. TRANSITIONAL ARRANGEMENTS

4.0.1 Due to the lack of consultation exercised by the Federal Government in formulating and drafting the WorkChoices legislation and its regulations and due to their unnecessary complexity, the SDA amends its primary submission at paragraph 4.5.6 in relation to the prohibited matter in Notional Agreements Preserving State Awards. It is arguable that the prohibited content referred to in that paragraph only relates to workplace agreements, as distinct from Notional Agreements Preserving State Awards.

4.0.2 Relevantly, the Workplace Relations Regulations 2006 provide:

“Division 7.1 – Prohibited content under section 356 of the Act

Subdivision A – Preliminary

REGULATION 8.4 PURPOSE OF DIVISION

8.4 *This Part specifies the matters that under section 356 of the Act are matters that are prohibited content for the purposes of the Act.*

Subdivision B – Various matters that are prohibited content

REGULATION 8.5 VARIOUS MATTERS

8.5(1) [Matters that are prohibited]

A term of a workplace agreement is prohibited content to the extent that it deals with the following:

- (a) deductions from the pay or wages of an employee bound by the agreement of trade union membership subscriptions or dues;*
- (b) the provision of payroll deduction facilities for the subscriptions or dues referred to in paragraph (a);*
- (c) employees bound by the agreement receiving leave to attend training (however described) provided by a trade union;*
- (d) employees bound by the agreement receiving paid leave to attend meetings (however described) conducted by or made up of trade union members;*
- (e) the renegotiation of a workplace agreement;*
- (f) the rights of an organisation of employers or employees to participate in, or represent an employer or employee bound by the agreement in, the whole or part of a dispute settling procedure, unless the organisation is the representative of the employer's or employee's choice;*
- (g) the rights of an official of an organisation of employers or employees to enter the premises of the employer bound by the agreement;*
- (h) restrictions on the engagement of independent contractors and requirements relating to the conditions of their engagement;*
- (i) restrictions on the engagement of labour hire workers, and requirements relating to the conditions of their engagement, imposed on an entity or person for whom the labour hire worker performs work under a contract with a labour hire agency;*

- (j) *the forgoing of annual leave credited to an employee bound by the agreement otherwise than in accordance with the Act;*
- (k) *the provision of information about employees bound by the agreement to a trade union, or a member acting in a representative capacity, officer, or employee of a trade union, unless provision of that information is required or authorised by law.*

8.5(2) Terms that encourage or discourage union membership

A term of a workplace agreement is prohibited content to the extent that it:

- (a) *directly or indirectly requires a person bound by the agreement:*
 - (i) *to encourage another person bound by the agreement to become, or remain, a member of an industrial association; or*
 - (ii) *to discourage another person bound by the agreement from becoming, or remaining, a member of an industrial association; or*
- (b) *requires a person bound by the agreement to indicate support, or lack of support, for persons bound by the agreement being members of an industrial association.*

8.5(3) Terms allowing for industrial action

A term of a workplace agreement is prohibited content to the extent that it permits a person bound by the agreement to engage in or organise industrial action.

8.5(4) [Terms dealing with disclosure of details of workplace agreement]

A term of a workplace agreement is prohibited content to the extent that it prohibits or restricts disclosure of details of the workplace agreement by a person bound by the agreement.

8.5(5) Terms providing for remedies for unfair dismissal

A term of a workplace agreement is prohibited content to the extent that it confers a right or remedy in relation to the termination of employment of an employee bound by the agreement for a reason that is harsh, unjust or unreasonable.

8.5(6) [Performance-management process terms not prohibited content]

To avoid doubt, a term is not prohibited content under subregulation (5) to the extent that it provides a process for managing an employee's performance or conduct.

8.5(7) Objectionable provisions

A term of a workplace agreement is prohibited content to the extent that it is an objectionable provision within the meaning of the Act.

8.5(8) Term concerning AWA

A term of a workplace agreement is prohibited content to the extent that it directly or indirectly restricts the ability of a person bound by the agreement to offer, negotiate or enter into an AWA.

8.5(9) Meaning of terms

In paragraph (1)(i):

labour hire agency means an entity or a person who conducts a business that includes the employment or engagement of workers for the purpose of supplying those workers to another entity or person under a contract with that other entity or person.

labour hire worker means a person:

(a) who:

- (i) is employed by a labour hire agency; or
- (ii) is engaged by a labour hire agency as an independent contractor; and

(b) who performs work for another entity or person under a contract between that entity or person and the labour hire agency.

REGULATION 8.6 DISCRIMINATORY TERMS

8.6(1) [Discriminatory terms prohibited content]

A term of a workplace agreement is prohibited content to the extent that it discriminates against an employee, who is bound by the agreement, because of, or for reasons including, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

8.6(2) [Exceptions]

For the purposes of subregulation (1), a provision of an agreement does not discriminate against an employee or class of employees merely because:

- (a) it provides for a rate or rates of pay that comply with a rate or rates of pay that are contained in the Australian Pay and Classification Scale or a special Federal Minimum Wage that would otherwise apply to the employee or class of employees; or
- (b) it discriminates, in respect of particular employment, on the basis of the inherent requirements of that employment; or
- (c) it discriminates, in respect of employment as a member of the staff of an institution that is conducted in accordance with the teachings or beliefs of a particular religion or creed:
 - (i) on the basis of those teachings or beliefs; and
 - (ii) in good faith.

REGULATION 8.7 MATTERS THAT DO NOT PERTAIN TO THE EMPLOYMENT RELATIONSHIP ARE PROHIBITED CONTENT

8.7(1) [Matters not pertaining are prohibited content]

Subject to subregulation (2), a term of a workplace agreement is prohibited content to the extent that it deals with a matter that does not pertain to the employment relationship.

8.7(2) Exception to rule in subregulation (1)

If:

- (a) *a term deals with a matter that does not pertain to the employment relationship; and*
- (b) *the matter is:*
 - (i) *incidental or ancillary to a matter contained in the agreement which does pertain to the employment relationship; or*
 - (ii) *a machinery matter; or*
 - (iii) *so trivial that it should be disregarded as insignificant; then, to the extent that the term deals with the matter, it is not prohibited content.*

8.7(3) Meaning of *pertains to the employment relationship*

In this regulation, a matter pertains to the employment relationship:

- (a) *in the case of a collective agreement – if it pertains to the relationship between the employer bound by the agreement and all persons who, at any time when the agreement is in operation, are employed by the employer and who are bound by the agreement; or*
- (b) *in the case of an AWA – if it pertains to the relationship between the employer bound by the agreement and the employee bound by the agreement.*

Division 7.2 – Prohibited content under Schedule 8 to the Act

REGULATION 8.8 PROHIBITED CONTENT

8.8(1) Term preventing the making of an AWA

A term of:

- (a) *a preserved individual State agreement; or*
- (b) *a preserved collective State agreement; or*
- (c) *a notional agreement preserving State awards;*

is prohibited content for the purposes of clauses 9 (a preserved individual State agreement), 15B (a preserved collective State agreement) and 37 (a notional agreement preserving State awards) of Schedule 8 to the Act to the extent that it prevents the employer bound by the agreement from making an AWA.

8.8(2) Term restricting training

A term of a notional agreement preserving State awards is prohibited content for the purposes of clause 37 of Schedule 8 to the Act to the extent that it restricts the range or duration of training arrangements.

8.8(3) [Definitions]

*In this regulation, **preserved individual State agreement, preserved collective State agreement and notional agreement preserving State awards** have the meanings given in Schedule 8 to the Act.”*

- 4.0.3 It is confounding that the Federal Government treats the same term “prohibited content” in two very distinct ways. Ordinary NSW citizens and small business enterprises are entitled to ask whether this legislation is genuinely “simpler” given the additional complexities introduced.

4.0.4 The SDA submits that this additional complexity is symptomatic of the Federal Government's general approach to the legislation. That approach is simply that industrial parties (employers, employees and unions) cannot be trusted to determine what is in their own interests and to draft the content of agreements to reflect the agreements genuinely reached. The prohibited content provisions are in effect the Government sitting at the negotiating table.

This reality is contrary to the propaganda of the Federal Government which has continuously asserted that the legislation facilitates agreement making in the workplace.

4.0.5 Prohibited content arrangements in workplace agreements and Notional Agreement Preserving State Awards simply impose the Federal Government's ideology on the outcomes of genuine bargaining or arbitrated "fair and reasonable" conditions reached between the parties.

5. JUSTICE FOR THE UNFAIRLY DISMISSED

- 5.0.1 WorkChoices operates to strip away the unfair dismissal rights of NSW workers.
- 5.0.2 For many NSW workers, no alternative legal avenue is now available to remedy the injustice of harsh, unjust or unreasonable termination. For others the pathway to justice is prohibitively complex and costly.
- 5.0.3 The SDA is currently investigating and pursuing three of such matters, which would have been promptly, fairly and efficiently handled by the NSW Industrial Relations Commission as unfair dismissal claims absent the interference of the WorkChoices legislation.
- 5.0.4 These matters, which relate to dismissal due to alleged unlawful grounds or freedom of association breaches, highlight to gross prejudice of the Commonwealth's legislation against employees without the means and resources to defend their interests.
- 5.0.5 The SDA has commenced unlawful dismissal proceedings on behalf of two unfairly dismissed members against their employers on the following grounds:

“659(2) [Grounds on which employment must not be terminated]

Except as provided by subsection (3) or (4), an employer must not terminate an employee's employment for any one or more of the following reasons, or for reasons including any one or more of the following reasons:

(a) temporary absence from work because of illness or injury within the meaning of the regulations;

...

(f) race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;”

- 5.0.6 In the first instance an SDA member with 17 years at a suburban independent supermarket service was sacked without any reason one week after making a workers compensation claim having been injured in the course of work. The employer has less than 101 employees and is, therefore, immune from unfair dismissal proceedings under the Commonwealth legislation. A copy of Ms Kouzoukas' statement to the Committee is attached at Annexure “D” detailing her recent experience.
- 5.0.7 In the second case, a SDA member with 16 months casual service in a regional NSW independent supermarket was terminated for the purpose by replacement by cheaper junior labour (under the age of 21). Once again the employer has less than 101 employees and is, therefore, now exempt from unfair dismissal proceedings.
- 5.0.8 The third case is a matter detailed by Ms Maree Filipczuk in her own private submission to the Committee. Ms Filipczuk was sacked after 4 months of

pursuing her minimum legal entitlements under the award, NSW industrial laws and superannuation entitlements. The SDA is currently considering freedom of association action against the employer in the Federal Court in relation to this matter.

- 5.0.9 The SDA submits that its members are better served than many others in this new “dog eat dog” environment where comprehensive employment protection legislation has been abolished for 4 million Australians. Nevertheless, the Committee should consider whether the ordinary individual citizen is in any position to pursue federal court proceedings against employers, necessarily involving a considerable investment in time, money and resources compared to unfair dismissal proceedings to seek justice. Conservative estimates put federal court proceedings to pursue an unlawful dismissal claim at a minimum of \$30,000.
- 5.0.10 Under WorkChoices the vast majority of unfairly sacked workers will be barred from commencing proceedings against their former employer and most unlawfully sacked workers will simply not be able to afford the process necessary to pursue a fair and just resolution to their dismissal.
- 5.0.11 This is simply no choice for NSW workers and their families.

Annexure “A”

Full-time Western Sydney Spotlight Worker - Weekly Earnings Difference

On 19 June 2006, the SDA NSW Branch confirmed that a member was working the following regular roster pattern up to and including the week ending 18 June 2006:

Working Hours and Shop Award Earnings

Day	Start	Finish	Meal	Hours	Ordinary Hours	Ordinary Rate	Thurs Night Hours	Thurs Night Rate	Saturday Hours	Saturday Rate	Sunday Hours	Sunday Rate	Total Earnings
Week1													
Monday					0	\$14.28							\$0.00
Tuesday	9:00	17:00	0:30	7.5	7.5	\$14.28							\$107.10
Wednesday	8:30	17:00	0:30	8	8	\$14.28							\$114.24
Thursday	9:00	17:00	0:30	7.5	7.5	\$14.28	\$17.85						\$107.10
Friday	9:00	17:30	0:30	8	8	\$14.28							\$114.24
Saturday					0					\$17.85			\$0.00
Sunday	10:00	16:00	0:30	5.5	5.5						5.5	\$21.42	\$117.81
Week 2													
Monday	8:30	17:00	0:30	8	8	\$14.28							\$114.24
Tuesday	8:30	17:00	0:30	8	8	\$14.28							\$114.24
Wednesday	8:30	17:00	0:30	8	8	\$14.28							\$114.24
Thursday	9:00	17:00	0:30	7.5	7.5	\$14.28	\$17.85						\$107.10
Friday	9:00	17:30	0:30	8	8	\$14.28							\$114.24
Saturday					0					\$17.85			\$0.00
Sunday					0								\$0.00
Total hours				76									\$1,124.55

Superannuation 9%

\$101.21

Average fortnightly earnings (including wages, allowances and superannuation)

\$1,225.76

Average weekly earnings (including wages, allowances and superannuation)

\$612.88

Working Hours and Spotlight AWA Earnings

Day	Start	Finish	Meal	Hours	Ordinary Hours	Ordinary Rate	Thurs Night Hours	Thurs Night Rate	Saturday Hours	Saturday Rate	Sunday Hours	Sunday Rate	Total Earnings
Week 1													
Monday					0	\$14.30							\$0.00
Tuesday	9:00	17:00	0:30	7.5	7.5	\$14.30							\$107.25
Wednesday	8:30	17:00	0:30	8	8	\$14.30							\$114.40
Thursday	9:00	17:00	0:30	7.5	7.5	\$14.30		\$14.30					\$107.25
Friday	9:00	17:30	0:30	8	8	\$14.30							\$114.40
Saturday				0						\$14.30			\$0.00
Sunday	10:00	16:00	0:30	5.5					5.5	\$14.30			\$78.65
Week 2													
Monday	8:30	17:00	0:30	8	8	\$14.30							\$114.40
Tuesday	8:30	17:00	0:30	8	8	\$14.30							\$114.40
Wednesday	8:30	17:00	0:30	8	8	\$14.30							\$114.40
Thursday	9:00	17:00	0:30	7.5	7.5	\$14.30		\$14.30					\$107.25
Friday	9:00	17:30	0:30	8	8	\$14.30							\$114.40
Saturday				0						\$14.30			\$0.00
Sunday				0								\$14.30	\$0.00
Total hours				76									\$1,086.80

Superannuation 9%

\$97.81

Average fortnightly earnings (including wages, allowances and superannuation)

\$1,184.61

Average weekly earnings (including wages, allowances and superannuation)

\$592.31

Difference between Earnings under the NSW Shop Employees' (State) Award and the Spotlight AWA

-\$20.57

* N.B. Superannuation has been calculated on the basis that it includes all loadings, penalties and work related allowances.

Full-time Western Sydney Spotlight Worker - Yearly Earnings Difference

Ordinary Total Earnings per year (52 weeks) with 4 weeks annual Leave

	<u>Shop Award Earnings</u>				
Annual leave	4 weeks @	38.0	hours @	\$14.280	per hour
17.5% annual leave loading					\$2,170.56
Sick leave	1.6 weeks @	38.0	hours @	\$14.280	per hour
Superannuation on leave*	9 % of	\$3,038.78			\$379.85
Average weekly earnings over	46.4 weeks @	\$612.88	per week*		\$868.22
					\$273.49
Totals					\$28,437.63
					\$32,129.75

Difference

\$1,329.66 per annum

4.14 % lost earnings

* Average weekly earnings - see sheet 1.
 ** Average weekly earnings - see Sheet 1.

N.B. Superannuation on leave does not include the annual leave loading component as per the ATO 94/4 ruling on OTE.

	<u>AWA Earnings</u>				
	4 weeks @	38.0	hours @	\$14.300	per hour
					\$2,173.60
	2 weeks @	38.0	hours @	\$14.300	per hour
	9 % of	\$3,260.40			\$1,086.80
	46 weeks @	\$592.31	per week**		\$293.44
					\$27,246.26
					\$30,800.10

Part-time Western Sydney Spotlight Worker - Weekly Earnings Difference

On 19 June 2006, the SDA NSW Branch confirmed that a member was working the following regular roster pattern up to and including the week ending 18 June 2006:

Working Hours and Shop Award Earnings

Day	Start	Finish	Meal	Hours	Ordinary Hours	Ordinary Rate	Thurs Night Hours	Thurs Night Rate	Saturday Hours	Saturday Rate	Sunday Hours	Sunday Rate	Total Earnings
Week 1													
Monday					0	\$14.28							\$0.00
Tuesday	9:00	17:30	0:30		8	\$14.28							\$114.24
Wednesday					0	\$14.28							\$0.00
Thursday	9:00	17:30	0:30		8	\$14.28		\$17.85					\$114.24
Friday	9:00	17:30	0:30		8	\$14.28							\$114.24
Saturday	9:00	16:00	0:30		6.5				6.50	\$17.85			\$116.03
Sunday					0							\$21.42	\$0.00
Week 2													
Monday	13:00	17:30	0:00		4.5	\$14.28							\$64.26
Tuesday	9:00	17:30	0:30		8	\$14.28							\$114.24
Wednesday					0	\$14.28							\$0.00
Thursday	12:30	21:00	0:30		8	\$14.28	3	\$17.85					\$124.95
Friday	9:00	17:30	0:30		8	\$14.28				\$17.85			\$114.24
Saturday					0								\$0.00
Sunday					0							\$21.42	\$0.00
Total hours					59								\$876.44

Superannuation 9% \$78.88

Average fortnightly earnings (including wages, allowances and superannuation) \$955.31

Average weekly earnings (including wages, allowances and superannuation) \$477.66

Working Hours and Spotlight AWA Earnings

Day	Start	Finish	Meal	Hours	Ordinary Hours	Ordinary Rate	Thurs Night Hours	Thurs Night Rate	Saturday Hours	Saturday Rate	Sunday Hours	Sunday Rate	Total Earnings
Week 1													
Monday				0		\$14.30							\$0.00
Tuesday	9:00	17:30	0:30	8	8	\$14.30							\$114.40
Wednesday				0		\$14.30							\$0.00
Thursday	9:00	17:30	0:30	8	8	\$14.30		\$14.30					\$114.40
Friday	9:00	17:30	0:30	8	8	\$14.30							\$114.40
Saturday	9:00	16:00	0:30	6.5	6.5				6.50	\$14.30			\$92.95
Sunday				0								\$14.30	\$0.00
Week 2													
Monday	13:00	17:30	0:00	4.5	4.5	\$14.30							\$64.35
Tuesday	9:00	17:30	0:30	8	8	\$14.30							\$114.40
Wednesday				0		\$14.30							\$0.00
Thursday	12:30	21:00	0:30	8	5	\$14.30	3	\$14.30					\$114.40
Friday	9:00	17:30	0:30	8	8	\$14.30							\$114.40
Saturday				0						\$14.30			\$0.00
Sunday				0								\$14.30	\$0.00
Total hours				59									\$843.70

Superannuation 9%

\$75.93

Average fortnightly earnings (including wages, allowances and superannuation)

\$919.63

Average weekly earnings (including wages, allowances and superannuation)

\$459.82

Difference between Earnings under the NSW Shop Employees' (State) Award and the Spotlight AWA

-\$17.84

* N.B. Superannuation has been calculated on the basis that it includes all loadings, penalties and work related allowances.

Part-time Western Sydney Spotlight Worker - Yearly Earnings Difference

Ordinary Total Earnings per year (52 weeks) with 4 weeks annual Leave

Shop Award Earnings

Annual leave	4 weeks @	29.5	hours @	\$14.280	per hour	\$1,685.04
17.5% annual leave loading						\$294.88
Sick leave	1.6 weeks @	29.5	hours @	\$14.280	per hour	\$674.02
Superannuation on leave*	9 % of	\$2,359.06				\$212.32
Average weekly earnings over	46.4 weeks @	\$477.66	per week*			\$22,163.42
Totals						<u>\$25,029.68</u>

AWA Earnings

Annual leave	4 weeks @	29.5	hours @	\$14.300	per hour	\$1,687.40
17.5% annual leave loading						\$0.00
Sick leave	2 weeks @	29.5	hours @	\$14.300	per hour	\$843.70
Superannuation on leave*	9 % of	\$2,531.10				\$227.80
Average weekly earnings over	46 weeks @	\$459.82	per week**			\$21,151.72
Totals						<u>\$23,910.62</u>

Difference

\$1,119.06 per annum

4.47 % lost earnings

* Average weekly earnings - see sheet 1.

** Average weekly earnings - see Sheet 1.

N.B. Superannuation on leave does not include the annual leave loading component as per the ATO 94/4 ruling on OTE.

Part-time Regional NSW Spotlight Worker - Weekly Earnings Difference

On 19 June 2006, the SDA NSW Branch confirmed that a member worked the following roster pattern for the week ending 18 June 2006:

Working Hours and Shop Award Earnings

Day	Start	Finish	Meal	Hours	Ordinary Hours	Ordinary Rate	Thurs Night Hours	Thurs Night Rate	Saturday Hours	Saturday Rate	Sunday Hours	Sunday Rate	Total Earnings
Monday													
Tuesday													
Wednesday													
Thursday	15:00	20:00	0:00	5	3	\$14.28	2	\$17.85					\$78.54
Friday	12:30	17:30	0:00	5	5	\$14.28							\$71.40
Saturday	9:00	16:00	0:30	6.5					6.50	\$17.85			\$116.03
Sunday	10:00	15:00	0:00	5							5	\$21.42	\$107.10
Total hours					21.5								\$373.07

Superannuation 9% **\$33.58**

Average weekly earnings (including wages, allowances and superannuation) **\$406.64**

Working Hours and Spotlight AWA Earnings

Day	Start	Finish	Meal	Hours	Ordinary Hours	Ordinary Rate	Thurs Night Hours	Thurs Night Rate	Saturday Hours	Saturday Rate	Sunday Hours	Sunday Rate	Total Earnings
Monday													
Tuesday													
Wednesday													
Thursday	15:00	20:00	0:00	5	3	\$14.30	2	\$14.30					\$71.50
Friday	12:30	17:30	0:00	5	5	\$14.30							\$71.50
Saturday	9:00	16:00	0:30	6.5					6.50	\$14.30			\$92.95
Sunday	10:00	15:00	0:00	5							5	\$14.30	\$71.50
Total hours					21.5								\$307.45

Superannuation 9% **\$27.67**

Average weekly earnings (including wages, allowances and superannuation) **\$335.12**

Difference between Earnings under the NSW Shop Employees' (State) Award and the Spotlight AWA **-\$71.52**

* N.B. Superannuation has been calculated on the basis that it includes all loadings, penalties and work related allowances.

Part-time Regional NSW Spotlight Worker - Yearly Earnings Difference

Ordinary Total Earnings per year (52 weeks) with 4 weeks annual Leave

	4 weeks @	21.5 hours @	\$14,280	per hour	\$1,228.08
Annual leave					\$214.91
17.5% annual leave loading					\$491.23
Sick leave	1.6 weeks @	21.5 hours @	\$14,280	per hour	\$154.74
Superannuation on leave*	9 % of	\$1,719.31			\$18,868.10
Average weekly earnings over	46.4 weeks @	\$406.64 per week*			
Totals					\$20,957.06

	4 weeks @	21.5 hours @	\$14,300	per hour	\$1,229.80
					\$0.00
	2 weeks @	21.5 hours @	\$14,300	per hour	\$614.90
9 % of		\$1,844.70			\$166.02
46 weeks @		\$335.12 per week**			\$15,415.52
					\$17,426.24

Difference

\$3,530.82 per annum

16.85 % lost earnings

* Average weekly earnings - see sheet 1.

** Average weekly earnings - see Sheet 1.

N.B. Superannuation on leave does not include the annual leave loading component as per the ATO 94/4 ruling on OTE.

Annexure “B”

~~RESIDE.~~
Commercial alt/add.
per P. Daw. 7/10.
SD

~~FERNANDEZ~~ 3

GROWING WITH PRIDE

Blacktown City Council

All communications to be addressed to:
The General Manager Blacktown City Council PO Box 63 Blacktown NSW 2148

Civic Centre
62 Flushcombe Road
Blacktown NSW 2148
DX 8117 Blacktown
Telephone: (02) 9839-6000
Facsimile: (02) 9831-1961

OFFICE USE ONLY	
Application No	05-2639
Application No	
Receipt No	280545
Date	6/10/05
Prop No	34/228
Application	

COMPLYING DEVELOPMENT CERTIFICATE, CONSTRUCTION CERTIFICATE, DEVELOPMENT CONSENT and/or OTHER APPROVALS

Details must be printed in ink. Tick ✓ as applicable.

1.1 TYPE OF CONSENT, CERTIFICATE, APPROVAL OR APPOINTMENT REQUIRED

- | | |
|---|---|
| <input checked="" type="checkbox"/> Development Consent (see note 4.3) | <input type="checkbox"/> Integrated Development Approval (see note 4.7) |
| <input type="checkbox"/> Complying Development Certificate (see note 4.2) | <input type="checkbox"/> Occupation Certificate (see note 4.11) |
| <input type="checkbox"/> Building Construction Certificate (see note 4.1) | <input type="checkbox"/> Subdivision Certificate (see note 4.13) |
| <input type="checkbox"/> Engineering Construction Certificate (see note 4.4) | <input type="checkbox"/> Appoint Council as Principal Certifying Authority and agree to comply with the applicant's obligation at note 4.12 |
| <input type="checkbox"/> Other Approval under s68 of the Local Govt Act 1993 or the Roads Act 1993 (see note 4.10) (please specify) → | |

1.2 Description of property

Address

1 20E PLACE, MOUNT DEUNY, NSW 2170
[Signature]

Lot or Portion, Section and Deposited / Strata Plan number

LOT 11 DP 866320 1/4 20 20E PLACE / LOT 12 DP 866320 1/4 19 20E PLACE

1.3 Description of Proposal Indicate if more than one aspect of development is proposed or if deferred commencement or staged development sought.

INTERIOR REFURBISHMENT FOR THE SHOP SMART FACTORY OUTLET

1.4 Cost of development Contract price or estimated cost (including GST) of proposed activity / development (including labour & materials)

\$ 900,000

1.5 If this application is for building development, please provide the applicable information.

Floor	Floor Area
-	m ²

1.6 Applicant (if owner, consent and authorisation is given as per note 1.7)

PROGETTO DESIGN
506 LOWER NORTH EAST RD CAMPBELLTOWN
(P) 08 83652749 (F) 08 83054130
[Signature] 27.9.05

Proposed Construction Materials **Builder** (if applicable and known)

Given Name
-
-
-
-

1.7 Consent of Owner - if applicant is not the owner (All owners must sign) if insufficient space, attach a separate consent

I/We own the subject land, consent to: (1) this application, (2) a copy of the Exhibition/Modification Plan (as described at note 2.6 being exhibited to the public) in the case of an application for residential development, but not including a private single dwelling house) or otherwise provided to the owner/occupant of land adjacent to the proposed development, and (3) Council's Officers entering the premises during normal office hours for the purpose of conducting inspections relative to this application. NOTE: If the owner is a Company or Owners Corporation, its Common Seal must be stamped over the signature/s, otherwise the Managing Director must sign and identify himself as the ACK

Name: *Ms Druitt Property Development*

Postal Address: PO BOX 3173 BUNDLE HALL SA 5080 S.

Phone & Fax (during office hours): (P) 08 8212 8888 (F) 08 212 4048

[Signature]

Please indicate whether you wish the required document/s to be posted or collected. 05-42157

Priority 5
Record Only

IMPORTANT INFORMATION

3.1 Section 94 Contributions

Developer contributions are levied on many forms of development in Blacktown under the provisions of s94 of the EPAA. Please ask enquiry staff or the application assessing officer for more details. Contributions must be paid prior to the release of the final plan of subdivision or BCC, whichever occurs first. Where a BCC is not required, payment must be made prior to occupation or use of the development.

3.2 Contaminated Land

Council's adopted "Contaminated Lands Policy" outlines what is meant by contaminated land, the processes involved in its identification and the procedures associated with Council's handling of such applications.

Essentially, the policy requires the submission of an initial site evaluation for every application where there is a change of use of the land and the previous use is suspected of being potentially contaminating or where adjacent land is suspected of being a source of potential contamination. A more detailed site investigation is required for sites identified as "risk sites" by way of the initial site evaluation process.

3.3 Demolition of Buildings

A DA proposing the demolition of a building (other than ED), must be accompanied by a site investigation report and a proposed work plan. The required details are outlined in Council's Policy for the Demolition of Buildings which is available from Council upon request. The demolition may involve the provisions of Council's "Contaminated Land Policy" (See note 3.2)

3.4 Advertising Signs and Structures

A DA to erect or display an advertising structure or sign (other than ED) should be accompanied by the following details:

- The proposed location of the sign and an elevation plan / pictorial representation.
- Details of the structure and construction materials.
- Size, colours and overall design of the sign.
- Proposed sign wording and method of any illumination.

3.5 Threatened Species

Under the provision of the Threatened Species Conservation Act, 1995, Council is required to consider the impact of all development proposals on threatened species populations, ecological communities or their habitat. To assist applicants to comply with the provisions of the Act, Council has prepared "Guidelines for Developers and Consultants" which are available upon request to enquiry staff or the application assessing officer. The development may also be subject to the Commonwealth Environment Protection and Biodiversity Conservation Act 1999. Further information regarding this Act and when it applies may be obtained from Environment Australia Tel. 1800 803 772

3.6 Public Road Damage

The applicant is responsible for any damage to any public roadway, footpath or infrastructure resulting from any activity or development. An inspection fee and bond is required to be lodged with Council prior to the issue of a BCC or CDC. Any restoration costs exceeding the bond will be sought from the applicant.

3.7 Development Advisory Panel

Council's Development Advisory Panel offers a forum for intending applicants to discuss development proposals prior to formally lodging a DA. Please contact Council's enquiry staff to arrange an appointment with the Panel.

3.8 Long Service Payment Corporation

The EPAA requires that a BCC, CDC, or ECC enabling the erection of a building or other construction exceeding a threshold value (currently \$25,000) not be issued until the appropriate levy or levy instalment has been paid to the Corporation. Council is presently an agent for the Corporation for the collection of the full levy.

3.9 Waste Management

A Waste Management Plan is required for all construction and demolition work (other than ED) in accordance with Council's Site Waste Management and Minimisation Development Control Plan. (See note 2.10)

		OFFICE USE ONLY			
		Constr. Cert. \$	Compl. Cert. \$	\$	¢
BUILDING FEES					
Miscellaneous (Class 10)	(70)	(72)			
Residential (Class 1)	(70)	(72)			
Residential (Class 2)	(70)	(72)			
COMMERCIAL < 250m ²	(70)	(72)			
(Class 3,5,6 & 9)					
250-4999m ²	(70)	(72)			
5000-19,999m ²	(70)	(72)			
> 20,000m ²	(70)	(72)			
Other	(70)	(72)			
INDUSTRIAL < 250m ²	(70)	(72)			
(Class 7 & 8)					
250-4999m ²	(70)	(72)			
5000-19,999m ²	(70)	(72)			
> 20,000m ²	(70)	(72)			
Other	(70)	(72)			
Sub-total	(70)	(72)			
ENGINEERING FEES					
Road, drainage and/or OSD works	(75)	(77)			
Miscellaneous	(75)	(77)			
Sub-total	(75)	(77)			
DA FEES					
DAB (Building) Fee		(66)			
DAP (Planning) Fee		(14)			
		15			
SA (Subdivision) Fee		()			
planFIRST Levy		(69)			
Sub-total					
COMPLYING DEVELOPMENT					
Building		(82)			
Subdivision		(83)			
ENGINEERING PLAN & INSPECTION FEES					
Engineering Plan and Inspection Fee		(68)			
(includes Roads Act and LGA approvals)					
GENERAL FEES					
Road Damage		(7)			
Road Damage Inspection Fee		(2)			
Road Damage Admin. Fee		(11)			
LSPC Levy		(58)			
Sundry Overpayment		(6)			
Sub-total					
OTHER FEES					
		()			
		()			
Sub-total					
TOTAL					

Outstanding Matters

Satisfied (Init / Date)

DA Fee \$2401: (Dap Fee \$1,825.00 + Plan FIRST Fee \$576.00) Owner's Consent

NOTICE OF DETERMINATION

UNDER THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (SECTION 81)



FILE COPY

APPLICANT

PROGETTO DESIGN
506 LOWER NORTH EAST ROAD
CAMPBELLTOWN SA 5074

FILE/DETERMINATION No.
05-2839

Page 1 of 10

PROPERTY DESCRIPTION

LOT 101 DP 1040199, H/N 10 ZOE PLACE, MOUNT DRUITT

DEVELOPMENT

ALTERATIONS AND RECONFIGURATION OF EXISTING SHOPSMART DISCOUNT CENTRE TO CREATE A LARGER SHOP TENANCY FOR A SPOTLIGHT STORE WITH ASSOCIATED AMENDMENTS TO PARKING AND LOADING AREAS.

DETERMINATION

Pursuant to Section 81 of the Act Council advises that the Development Application has been determined by:

- GRANTING OF CONSENT SUBJECT TO THE CONDITIONS ATTACHED ON THE FOLLOWING PAGE(S)

BY DELEGATED AUTHORITY - DIRECTOR ENVIRONMENTAL AND PLANNING SERVICES

RIGHT OF APPEAL

Section 97 of the Act confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court.

NOTE: This Consent is generally valid for a period of 5 years effective from the date of this notice, unless specified otherwise by Sections 83 and 93 of the Act, or by conditions of this consent.

RON MOORE
GENERAL MANAGER

per: P. Oaw

23 FEB 2006

Pursuant to Section 101 of the Environmental Planning and Assessment Act 1979, notice of this determination will be published in a newspaper circulating in the local area. Any person may question the validity of this consent by legal proceedings commenced in the Land and Environment Court within 3 months of the date of publication of the notice.

Annexure “C”

SUCCESSFUL MOUNT DRUITT RETAILERS PROVIDING MINIMUM WAGES AND CONDITIONS EQUAL TO OR IN EXCESS OF THE NSW SHOP EMPLOYEES (STATE) AWARD

Retailer	Instrument	Base Weekly Wage	Overtime rates	Sunday Penalty Rates	Late Night Penalty Rates / Overtime	Public Holiday Penalty Rates	Voluntary Work on Public Holidays	17.5% Annual Leave Loading	Allowances (work and expense)	Comprehensive Rostering Conditions	Paid Rest Pauses
Coles	CA	\$602.20	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Woolworths	CA	\$600.37	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Kmart	CA	\$582.70	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Target	CA	\$571.00	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Just Jeans	CA	\$564.00	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Best & Less	Award	\$542.80	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Liquorland	CA	\$575.80	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Reject Shop	CA	\$574.18	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Priceline	CA	\$564.16	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Millers (SFG)	CA	\$571.19	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

(Over 579 jobs)

Spotlight AWA

Retailer	Instrument	Base Weekly Wage	Overtime rates	Sunday Penalty Rates	Late Night Penalty Rates / Overtime	Public Holiday Penalty Rates	Voluntary Work on Public Holidays	17.5% Annual Leave Loading	Allowances (work and expense)	Comprehensive Rostering Conditions	Paid Rest Pauses
Spotlight	AWA	\$543.40	No	No	No	No	No	No	No	No	No

(40 jobs)

Annexure “D”

20 June, 2006

Committee Secretary
Social Issues Committee
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Sir/Madam,

**STATEMENT OF VICKI KOUZOUKAS TO THE INQUIRY INTO THE IMPACT OF
THE COMMONWEALTH WORK CHOICES LEGISLATION**

My name is Vicki Kouzoukas. I am 32 years of age. I commenced working for Jewel Foodbarn on 16 September 1989. I was 16. I transferred to their Bexley store over 6 years ago.

I was employed as a shop assistant on a full-time basis under the terms of the Shop Employees (State) Award.

At the time of my termination on 15 May 2005 I had working at the same store for over 16 and one half years.

I would like to tell the committee what happened to me not long after the new IR laws came into effect.

In February this year, new owners, Osman Holdings took over the business. I continued to work in the business. (I understand that Osman Holdings also operates up to 2 other stores in the ACT).

On 9 May 2006 while at work I twisted and injured my knee. I was in pain but I continued to work. The next day I turned up to work and reported the injury to the manager and co-owner of the shop. I asked the manager to provide me with an accident report form.

I worked the rest of the day but was not provided with the accident report form.

On 11 May 2006 I came to work still feeling the effects of the injury and still in pain. Again I asked for the accident report form. In addition I informed the manager that I needed to have some x-rays done on my injured knee. The manager told me in no uncertain terms that I must attend to the x-rays outside of work hours and in my own time. I completed my shift and still was not provided with the accident report form.

After work, I visited a GP who provided me with a referral for an x-ray. The x-rays were booked for the next day.

The next day, 12 May 2006, after having the x-rays I went back to the doctor to discuss the results. The doctor advised me that I had suffered ligament damage and was

provided with a WorkCover medical certificate. The certificate stated that I would be unfit for work over the following week.

I contacted the store and spoke to the manager advising him that I would be unfit to work over the following week. I again requested that a copy of the accident report form be provided to me. I was advised that the insurance company would be sending the accident report forms to the store.

The store manager told me that he would call me when the forms arrived at the store.

On Saturday 13 May 2006, I noticed that I had a missed call on my mobile. I realised it was the store number. I then telephoned the store and spoke to the manager. The manager asked me to come in to work on 15 May 2006. He informed me that the other co-owner, Mr Abdul Osman wanted to speak to me. He did not tell me why Mr Osman wanted to speak to me.

I went in to work on 15 May 2006, as requested. Upon my arrival the store manager took me up to the office. I found Mr Osman waiting for me. I handed to Mr Osman the WorkCover medical certificate and a receipt, being payment for the x-rays, to submit to the insurance company.

He then gave me my previous weeks wages. I signed the book to state that I had received my pay. He then handed me a cheque for \$1940. I asked Mr Osman what the cheque was for and he responded by handing me a letter and told me to read it. Mr Osman then stated that I was terminated as of 15 May 2006 and was receiving 4 weeks notice. I was shocked and asked, "Why am I getting sacked" Mr Osman replied, "You are no longer required"

The letter Mr Osman gave me read:

*"Ms Vicki Kouzoukas
34 Bourne Street
Marrickville*

I write to advise you formally that your employment with the company is to be terminated as of 15th May 2006.

I am paying you the sum of \$1940.00 in lieu of the four weeks notice. When the company acquired the business we agreed to take over the obligation to pay your proper award entitlements. Unfortunately, we have never been provided with those details by the previous owners of the business.

Could you please advise me as soon as possible as to what you believe your outstanding entitlements are and how you calculate them.

Subject to checking those, as best I can I will provide you with payment of that amount immediately.

Yours faithfully,

*Abdul Osman
Managing Director*

Osman Holdings."

I learned later that Solicitors representing the Company had prepared the letter that was issued to me by Mr Osman..

I then asked Mr Osman where the rest of my entitlements were. He said, "What entitlements?" I replied, "My long service leave and annual leave." He said, "Get it in writing"

I could not believe what had just happened. I had worked in that store for over 16 years and at the end it came to nothing. I was devastated and felt helpless.

I then contact the Shop, Distributive and Allied Employees Association ("SDA") of which I am a member. The SDA took up my case and filed proceedings for unlawful dismissal before the Australian Industrial Relations Commission.

I am aware that since my termination the Company has sort to defend its decision by stating that I did not have a cause as they employed less than 100 employees. The have also stated, through their solicitors, that as I don't have a case I can expect to be hit with costs in the matter.

Relevantly, I have become aware that since my termination the Company has hired more staff.

It is clear to me that the Company has used the new IR laws to terminate my employment. I believe a fundamental injustice exists when an employer can terminate your employment so unilaterally and unfairly and then seek to hide behind unjust IR laws and in so doing defend their position.

I know if the matter remains resolved, the only way I can get justice for what has happened to me is by taking further proceedings in the federal court. As I am member of the SDA, I know I have representation. I have real concerns, however, for employees who may not have such representation.

In addition, I find that instead of having access to a cheap and efficient mechanism to deal with my termination from start to finish, that is, through the Australian Industrial Commission, I have to face the prospect of a costly and prolonged court process.

In short, things at my store whilst not perfect worked well. Importantly, we did not fear for our jobs. Now under the new IR laws, I feel the small business employer will feel that they have to right to treat their employees not with dignity and respect but as commodities and after more than 16 and a half years of loyal service be faced with the prospect of being told "We don't require you any more"


Vicki Kouzoukas