Submission
No 31

INQUIRY INTO IMPACT OF COMMONWEALTH WORKCHOICES LEGISLATION

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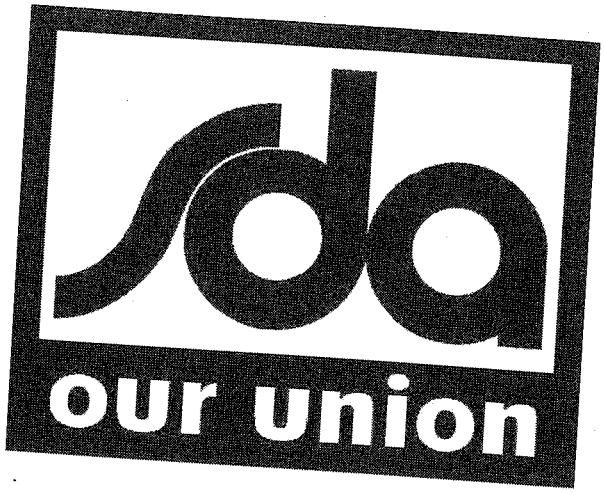
Summary



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

SUBMISSION

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1. EXECUTIVE SUMMARY

1.0.1 The SDA makes this submission consistent with the inquiry's terms of reference attached at **Annexure "A"**.

1.0.2 The commencement of the Commonwealth WorkChoices legislation will be detrimental to the wages, conditions of employment and the living standards of NSW workers and their families.

1.0.3 WorkChoices abolishes the principle of industrial "fairness", a cornerstone of the unique Australian industrial system for a century, it diminishes genuine choice for NSW workers trapped by its application and increasingly commodifies work as an essentially economic activity rather than a human endeavour.

1.0.4 WorkChoices makes systematic and extensive changes to almost every aspect of Australian industrial laws, the effect of which will be to corrode the foundations of NSW living standards. In particular, the combined effect of the following changes will be adverse to the wages and conditions of NSW workers and their capacity to earn a decent living:

- the removal of "fairness" and emphasis upon merely economic effects of wage-setting decisions in the minimum wage setting criteria for the Fair Pay Commission;

- the abolition of the no-disadvantage test for workplace agreements;

- the unfettered infiltration and priority given to Australian Workplace Agreements (overriding the operation of valid collective workplace agreements in any workplace);

- the statutory exclusion of between 75% to 90% of unfair dismissal claims due to the new jurisdictional barrier preventing claims against employers with 100 or less full-time, part-time and regular casual employees; and

- the obstruction of existing "fair and reasonable" NSW minimum Award conditions of employment

1.0.5 Australian Workplace Agreements already offered and made (or purportedly made) under the auspices of the WorkChoices legislation in the retail enterprises, such as Pulp Juice Bars and Spotlight, demonstrate the extent to which wages and conditions are reduced without a rigorous safety net or comprehensive no-disadvantage test in place for vulnerable workers.

1.0.6 Australian Workplace Agreements made in other retail enterprises, such as Krispy Kreme and Aldi, illustrate the fiction of "choice" under existing legislation.

1.0.7 Further deregulation of the workplace agreement making process under WorkChoices and concentration of bargaining power in the hands of employers

will encourage increasing numbers of employers to undercut current wages and conditions in a new "race for the bottom".

1.0.8 Direct SDA experience, academic research, statistical evidence and the bitter personal experiences of workers themselves unequivocally demonstrate that young people, women, workers with family responsibilities, regional workers and casuals (highly concentrated in the retail industry) are more likely to suffer diminished wage outcomes, inferior conditions of employment and less job security under a deregulated wages system provided for under the WorkChoices legislation.

1.0.9 These categories of workers tend to lack the necessary skills, experience, knowledge and confidence to bargain effectively on an individual basis with their employer.

1.0.10 Previous experiences with similar industrial deregulation in the State of Victoria and in New Zealand strongly suggest that a widespread reduction in wages and conditions for retail workers will occur.

1.0.11 No convincing evidence exists in support of the Federal Government's contention that the WorkChoices legislation will lead to *"higher wages, better jobs and a more decent society"*.

1.0.12 The SDA recommends:

(a) The adoption of comprehensive NSW laws protecting young people from economic exploitation ("Child Labour Legislation"). Such legislation shall, inter alia, proscribe the employment of children under the age of 18 years in NSW unless the child employee's employment conditions meet the required "fair and reasonable" standard;

(b) The establishment of an appropriate NSW Government body and / or mechanism to monitor and report to the Minister for Industrial Relations on the impact of the Commonwealth WorkChoices legislation on NSW workers and their families on an regular and ongoing basis;

(c) A further parliamentary inquiry, with the same or similar terms of reference, to be scheduled in no more than 12 months to investigate and report on the impact of the Commonwealth WorkChoices legislation; and

(d) The making of any and all such other NSW laws which shall lawfully and effectively protect the livelihood of welfare of NSW workers and their families.

2. INTRODUCTION

2.0.1 The significance of the Federal Government's extensive and radical changes to the *Workplace Relations Act* 1996 can only be fully appreciated in the context of Australia's unique industrial heritage. The Commonwealth WorkChoices legislation abolishes or downgrades over one hundred years of industrial laws.

2.0.2 This submission addresses not only the most radical aspects of the legislation but also seeks to emphasise those matters of greatest concern to trade unions such as the SDA, in its endeavour to promote, improve and safeguard the interests of its members, and to ordinary NSW workers and their families.

2.1 ABOLISHING THE PRINCIPLE OF FAIRNESS

2.1.1 Every worker is entitled to be treated with respect, dignity and fairness. This principle is an integral component of our Australian industrial and social fabric. It is a reflection of our shared conviction that every person, worker and employer alike, is entitled to a "fair go". It is also an extension of our egalitarian values.

2.1.2 This principle has evolved over the last century to become a touchstone of our unique Australian industrial relations system. In the seminal *Harvester* judgment of 1907 Sir Justice HB Higgins established the principle as follows:

> *"The provision for fair and reasonable remuneration is obviously designed for the benefit of the employees in the industry; and it must be meant to secure to them something which they cannot get by the ordinary system of individual bargaining with employers. If Parliament meant that the conditions shall be such as they can get by individual bargaining – if it meant that those conditions are to be fair and reasonable, which employees will accept and employers will give, in contracts of service – there would have been no need for this provision. The remuneration could safely have been left to the usual, but unequal, contest, the "higgling of the market" for labour, with the pressure for bread on one side, and the pressure for profits on the other. The standard of "fair and reasonable" must, therefore, be something else; and I cannot think of any other standard appropriate than the normal needs of the average employee, regarded as a human being living in a civilized community."* [1]
>
> *"I do not regard it as my duty to fix a high wage, but a fair and reasonable wage; not a wage that is merely enough to keep body and soul together, but something between these two extremes."* [2]

In 1971 Justice Sheldon extended the principle of "a fair go all round" in his influential judgment *In re Loty and Holloway v Australian Workers' Union*:

> *"I believe that in the modern context expressions used in the older cases such as `harsh', `oppressive' and `unconscionable' as determinants as to whether intervention by an industrial authority is in its discretion permissible*

[1] Ex Parte HV McKay (1907) 2 CAR 1 at 4
[2] Ibid at 16

are properly interpreted on the basis simply of firstly deciding in all the circumstances, even though in the dismissal (be it summary or on notice) the employer has not exceeded his common law and/or award rights, whether the employee has received less than a fair deal. Mr Commissioner Manuel *in a recent case put it in a nutshell and in language readily understood in the industrial world when he conceived his duty to be to ensure `a fair go all round'. In my view, the use of the old adjectives, with their overtones from other jurisdictions, tends to distort this basically simple approach in that they can be strained to mean that an employer can be less than fair in exercising his right to dismiss and yet stand outside the permissible area within which an industrial authority in its discretion may act."*[3]

The New South Wales legislature saw fit in 1996 to maintain this principle in Sections 3 and 10 of the NSW *Industrial Relations Act* 1996, in particular:

"Section 3 Objects

The objects of this Act are as follows:

(a) to provide a framework for the conduct of industrial relations that is fair and just,
(b) to promote efficiency and productivity in the economy of the State,
(c) to promote participation in industrial relations by employees and employers at an enterprise or workplace level,
(d) to encourage participation in industrial relations by representative bodies of employees and employers and to encourage the responsible management and democratic control of those bodies,
(e) to facilitate appropriate regulation of employment through awards, enterprise agreements and other industrial instruments,
(f) to prevent and eliminate discrimination in the workplace and in particular to ensure equal remuneration for men and women doing work of equal or comparable value,
(g) to provide for the resolution of industrial disputes by conciliation and, if necessary, by arbitration in a prompt and fair manner and with a minimum of legal technicality,
(h) to encourage and facilitate co-operative workplace reform and equitable, innovative and productive workplace relations."

"Section 10 Commission may make awards

The Commission may make an award in accordance with this Act setting fair and reasonable conditions of employment for employees."

As recently as 1996, the Federal Government also recognised and respected the principle of "fairness" in the Objects of the *Workplace Relations Act* 1996 as follows:

"Section 3 Principal Object of this Act

The principal object of this Act is to provide a framework for cooperative workplace relations which promotes the economic prosperity and welfare of the people of Australia by:

...

[3] *in re Loty and Holloway v Australian Workers' Union* [1971] AR (NSW) 95 at 99

(d) providing the means:

...

(ii) to ensure the maintenance of an effective award safety net of fair and enforceable minimum wages and conditions of employment; and

(e) providing a framework of rights and responsibilities for employers and employees, and their organisations, which supports fair and effective agreement-making and ensures that they abide by awards and agreements applying to them; ..."

These are but a few significant examples of the inextricable relationship between the notion of "fairness" and Australian industrial laws over almost a century. As can be seen, the principle has become integrated with wage fixing principles, minimum terms and conditions of employment, agreement making and the right to protection from unfair dismissal.

2.1.3 The commencement of the *Workplace Relations Amendment (Work Choices) Act* 2005 ("WorkChoices") rejects the assumption that the State has any role in establishing and maintaining an industrial framework giving sustenance to this principle. The core of the legislation expressly abolishes the principle of "fairness" as a foundation of Australian industrial relations:

- It has been removed as a principle object of the legislation (with the exception of references to a "flexible and fair labour market" and the "Australian Fair Pay Commission");

- It has been stripped away from wage fixing criteria;

- Existing "fair and reasonable" Award minimum terms and conditions of employment made under both State and Federal Awards are no longer guaranteed as a package in workplace agreements; and

- The right to protection from unfair dismissal, measured against the "fair go all round", has been eliminated for the vast majority of Australian workers.

2.1.4 The calculated abolition of references to fairness in the WorkChoices legislation augurs poorly for New South Wales workers and their families, particularly those engaged in unskilled or semi-skilled work, those working casually or part-time, young workers, women, workers with family responsibilities and regional workers. It is these categories of vulnerable workers, generally dependent upon awards and agreements, which already struggle to earn decent wages and conditions in an increasingly deregulated labour market.

2.1.5 This further wave of deregulation ushered in by the WorkChoices legislation is intended to break the nexus between fair and reasonable conditions of employment, including minimum wages, Award / Agreement terms and conditions and unfair dismissal protection, with those wages and conditions in reality operating in Australian workplaces. By demolishing this nexus it further concentrates power in the hands of employers, in an inherently unequal bargaining relationship, and reinforces a "take it or leave it" attitude toward employment relationships.

2.1.6 The abolition of the principle of "fairness" underpins the operation of almost every facet of this radical legislation. This submission primarily focuses on four fundamental changes implemented by the WorkChoices legislation, which in all instances reflect the abolition of the principle of industrial "fairness". In all four instances, the Union submits that the changes will have a detrimental impact on the categories of vulnerable NSW workers detailed above. These changes are:

- The elimination of minimum wage-setting powers from the functions of the Australian Industrial Relations Commission and referral of such powers to the newly established Australian Fair Pay Commission;
- The arbitrary and sweeping restriction of access to unfair dismissal rights;
- The abolition of the No-Disadvantage Test in the Workplace Agreement making process;
- The promotion of Australian Workplace Agreements ("AWAs") as the Government's preferred form of employment instrument; and
- The transitional treatment of NSW Award minimum terms and conditions.

2.1.7 This principal focus should not detract, however, from the Union's grave concerns regarding other aspects of the legislation. The Union has merely concentrated on these particular matters as matters of the greatest significance to the ordinary experience of NSW workers and their families.

2.2 CHOICE

2.2.1 The SDA has extensive familiarity with the operation of the *Workplace Relations Act* 1996, prior to the commencement of the WorkChoices amendments. It also has had some early experiences with ruthless employers seeking to use the full effect of the new WorkChoices arrangements to reduce wages and strip away conditions of employment. In this experience, "choice" is illusory for retail and fast food workers. Some illustrative cases are provided at paragraphs 3.3.2 to 3.3.19.

2.2.2 Workers without relevant skills, knowledge or experience, such as those commencing work in the retail industry for the first time, do not have sufficient bargaining power to freely exercise "choices". Terms and conditions of employment are offered on a "take it or leave it" basis.

2.2.3 This approach was unambiguously demonstrated in the recently well-publicised case of Amber Oswald, a 15 years old school student, and her employer Pow Juices Pty Ltd trading as Pulp Juice Bars. The employer sought in late March 2006 for all of its young employees to accept and sign an inferior AWA (compared to the applicable Section 170LK non-union certified agreement in operation) as a condition of employment following the transmission of the business.[4] When the employer was questioned by the media about this tactic, he responded:

[4] A copy of the Pow Juice Pty Ltd AWA is attached at **Annexure "B"**.

Andre, Pow Juice: "If they don't want to sign, they can leave. It's not about what's fair, it's [about] what's right – right for the company."[5]

2.2.4 Whilst this statement received almost universal condemnation during the public debate concerning the commencement of WorkChoices in early April 2006, federal industrial law principally supports this appalling industrial tactic. As stated in SDA submissions during AIRC proceedings regarding the matter:

> *Mr B Smith: "So what Pow trading as Pulp attempted but failed to do was to offer as a pre-condition of employment AWAs for the transfer of employees that were substantially inferior to the pre-reform agreement. The pre-reform agreement for a 16 year old casual provided $9.52 per hour on week days, $11.90 per hour on Saturdays, $14.27 on Sundays and $19.83 per hour on public holidays, three hour minimum shifts, various allowances, rest breaks and meal breaks and a dispute resolution procedure that empowers an independent umpire of this Commission to resolve a dispute of application of the agreement.*
>
> *Whereas the AWA for the 16 year old casual on the other hand provided a flat rate of $8.57 per hour for all hours worked, which was less than the prevailing shop employee State award. That was regardless whether it was on week days, weekends, public holidays or for overtime. There's no minimum shift mentioned in the AWA and on the face of the AWA there seemed to be less public holidays. Disputes about the application of the agreement would not come here to the Industrial Relations Commission but rather be referred back to the company's lawyers or consultants, enterprise initiatives on the face of the document.*
>
> *Now, Commissioner, it was a real bare bones deal, but I don't say that the company did anything illegal in what it set out to do. It may have done it and it or its consultant botched up the application of it, but I think the truly sad thing is that under the new laws, Commissioner, is that if had carried out their plan properly, this Commission would have no jurisdiction over this matter ... That I concede is the effect of the new Act ..."*[6]

2.2.5 The landmark decision of the Full Court of the Federal Court (Wilcox, Kiefel and Merkel JJ) in *Burnie Port Corporation v Maritime Union of Australia* [2000] FCA 1768 determined that employment offers made conditional upon signing an Australian Workplace Agreement ("AWA") do not breach the freedom of association provisions of the Act.

2.2.6 There is no choice for new employees offered employment contingent upon accepting and signing an AWA.

2.2.7 Even in circumstances where existing employees, entitled to "fair and reasonable" Award wages and conditions, recognise that the terms and conditions of employment offered in an AWA are substandard in comparison to their existing wages and conditions, and therefore not in their better interests, many reluctantly accept the offer. Their reasons include the protection of existing hours of work (in the case of casual employees), the protection of future

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[5] "Same work, $40 less: take it or leave it", Sydney Morning Herald, Monday, 10 April 2006, p 3.

[6] SDA on behalf of Amber Oswald v Pow Juices Pty Ltd t/as Pulp Juice Bars, Matter C 2006 / 2484, before Commissioner Lawson, Sydney AIRC, Transcript 26/4/2006, paragraphs 20-22.

promotion opportunities (in the case of employees seeking a career) and fear of conflict with and / or disappointing their employer (in the case of employees who desire a harmonious work environment). These employees are often unwilling to challenge, negotiate and / or query the wages and conditions on offer.

2.2.8 In the retail industry, the SDA also has experience with employers who rely upon high average staff turnover rates (varying from 40% to 100% p.a. in the industry) to secure preferred industrial instruments, such as AWAs, over more extended timeframes. The retailer is prepared to "suffer" the short-term co-existence of two different industrial instruments in operation for existing staff (e.g. an AWA and a pre-existing applicable State Award) to achieve its long-term goal of implementing an inferior industrial instrument throughout its workforce.[7] New employees covered by the employer's preferred AWA gradually replace existing employees covered by an Award through natural attrition.

2.2.9 It is in this context that the WorkChoices amendments further erode the "choices" available to workers. Certified agreements made under the pre-reform Act prevailed over AWAs.[8] WorkChoices abandons this prerogative. Collective Agreements, made with or without union participation, no longer have priority over AWAs. Any employer can enter into an AWA with any of its employees during the nominal term of a workplace agreement made under the WorkChoices legislation:

> *"Section 348(2)* ***[Current AWA excludes collective agreement coverage]***
>
> *A collective agreement has no effect in relation to an employee while an AWA operates in relation to the employee."*

2.2.10 This amendment not only interferes with the integrity of binding industrial arrangements made with full consent, knowledge and participation of the relevant parties, including the employer, the majority of employees and the union (where relevant), but also exposes individual employees, vulnerable without the collective support of the their work colleagues, to accepting inferior terms and conditions of employment contained in AWAs, which may now legally undercut minimum award conditions.

2.2.11 The WorkChoices legislation offers "choice" for employers to implement their preferred industrial arrangements to the exclusion of employees' collective rights.

2.3 WORK

2.3.1 WorkChoices challenges our notions about the role of work and its proper function within our lives, our family life and the broader community.

2.3.2 Do we as a society of people work for the good of the economy or does the economy work for the good of society? Should our relationships with our family, friends, neighbours, colleagues and the broader community be superseded by

[7] Refer to paragraphs 3.3.12 to 3.3.19 and 5.4.2 to 5.4.5 for further examples of AWAs that are substandard in comparison to State Award wages and conditions.
[8] Section 170VQ(6) of the *Workplace relations Act* 1996 (Cth) (pre-reform)

our capacity to be productive for the economy? What is the proper context of work in our lives?

> *"...man is destined for work and called to it, in the first place, work is 'for man' and not man 'for work' ..."*[9]

2.3.3 The SDA submits that WorkChoices challenges us to reaffirm our recognition of the invaluable contribution of work (both paid and unpaid) in our society for the good of all people. Work provides an important conduit for people to express their thoughts and creativity, interact with others, and to channel their skills and energy. It also provides income for ourselves and our families to secure the necessities of life. It also builds the physical, institutional and social dimensions of our community for today and future generations.

2.3.4 It is within this context that we must reject that "the end", that is "a strong and productive economy", is more important than "the means", that is "the people" and institutions and laws which guarantee fair and reasonable wages and conditions of employment for the people.

2.3.5 The Federal Government has asserted that WorkChoices is the next evolutionary step required to ensure a strong and productive economy. As stated by the Minister for Workplace Relations, Hon Kevin Andrews MP:

> *"[The reforms] rest on a simple proposition that the best guarantee of good jobs, high wages and a decent society is a strong and productive economy. No system of industrial regulation can protect jobs and support high wages if our economy is not strong and productive ...*
>
> *... These are reforms that will strengthen our economy and will secure better opportunities for all Australians into the future."*[10]

2.3.6 These assertions are made without any reliable or convincing economic evidence. As stated in the minority Senate report on the WorkChoices bill by Opposition Senators:

> *"There is no compelling evidence to show that the proposed laws will create jobs, lift productivity or improve living standards. There is no evidence that the industrial relations system has hindered national economic performance either. Opposition Senators note that there has been sustained productivity and employment growth for the better part of a decade ..."*[11]

2.3.7 Putting its own complexion on the economic benefits likely to accrue from the reforms, the Commonwealth Treasury had this to say:

> *" ... Higher employment growth is expected from the new federal system:*
>
> - *as employers are likely to respond positively to the reduction in workplace complexity which will arise from award rationalisation and a reduced number of workplace relations jurisdictions; and*

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[9] Laborem Exercens, Pope John Paul II

[10] Hon Kevin Andrews MP, Commonwealth Parliamentary Debates, 2/11/05, p12.

[11] Senate Employment, Workplace Relations and Education Legislative Committee, Provisions of the Workplace Relations Amendment (Work Choices) Bill, November 2005, pp 84-85.

- *due to a greater focus on economic impacts, increases in minimum wages are likely to be lower than they would have been under the adversarial AIRC system.*

In the short-term, labour productivity growth can be suppressed as workers in lower-than-average productivities join the workforce and capital accumulation fails to keep pace with employment growth ..."[12] [underlining added]

2.3.8 The Treasury Minute is noteworthy in that it makes two interesting but not startling admissions:

- Treasury predicts lower wage increases for employees on minimum wages; and

- The reforms will not increase productivity in the short term.

2.3.9 In contrast, it is established that the Australian economy, productivity and minimum wages have grown considerably over the previous decade within the existing framework of State and Federal industrial laws, which substantially guaranteed fair and reasonable wages and conditions of employment and protections against unfair and / or unlawful treatment in the workplace.

2.3.10 WorkChoices is not evolutionary. It is revolutionary.

2.3.11 WorkChoices places the economy before people by assuming, without evidence, that improved economic output and productivity will by some means deliver better wages and conditions of employment.

2.3.12 Contrary to the Minister's assertions, the SDA suggests that overall economic growth does not necessarily guarantee higher wages, better jobs or a decent society. Vulnerable employees, such as youth, women and casuals, have primarily depended upon major test cases convened and determined at both a federal and state level over the last decade to improve wages and conditions:

- National and State Wage Cases;

- Family Provisions Cases

- Redundancy Test Case;

- Secure Employment Test Case; et al

2.3.13 To rely upon the free market to willingly provide these improvements, given the vigorous opposition of employer organisations to these industrial gains over the last decade, is either naïve or disingenuous.

2.3.14 It is not unreasonable to presume that improvements to wages and conditions will continue to occur in industries afflicted by labour and skill shortages in a more deregulated industrial environment; the market will simply adjust to attract candidates where the demand exists. This is already in evidence where skilled

[12] Australian Government Treasury Executive Minute, 6 October 2005, p 3.

tradespersons are currently securing significantly higher increases to wages and improvements to conditions than their relatively unskilled counterparts. However, in unskilled to semi-skilled industries such as retail and fast food, where the entry point for employment is not contingent upon age, skills or experience, there is simply not the same market pressure for employers to make improvements to wages and conditions.

2.3.15 Improvements to wages and conditions in the retail and fast food industries have largely relied, either directly or indirectly, on incremental improvements to the Award safety net.

2.3.16 The SDA ventures that WorkChoices increasingly treats people and their capacity to work as just another component of production, like capital, land or innovation. People are more important. People and the work they perform should be recognised as a far more valuable commodity than any other inert component of production and, as such, are entitled to wages and conditions of employment that are just and fair rather than determined at the whim of the free market.

2.3.17 These extreme laws are a recipe for lower wages, poorer conditions of employment and no protection against unfair or unscrupulous treatment in the workplace. Vulnerable workers, such as youth, women, workers with family responsibilities, regional workers and casuals, without the knowledge, experience or skills to compete in a less regulated and more market oriented environment, will simply not secure the "fair and reasonable" wages and conditions in the future that were previously guaranteed under NSW and Federal industrial laws.

2.3.18 Human work is a far too important and valuable to be treated as a mere component of production. WorkChoices exposes our work to all the frailties and harshness of the free market. In this brave new world it is the strong, the experienced, the skilled and the knowledgeable that will prosper. The SDA is concerned for those who lack sufficient skills, experience and knowledge to compete and bargain effectively under WorkChoices.

2.3.19 This submission explains why these concerns are well founded.

3. THE SDA

3.0.1 The Shop, Distributive and Allied Employees' Association, New South Wales Branch (the "SDA") represents the interests of retail, fast food, warehousing and distribution and pharmaceutical manufacturing employees in New South Wales and the Australian Capital Territory.

3.0.2 The Shop, Distributive and Allied Employees' Association is the largest trade union in Australia, with over 230,000 members. It has branches in every state and one in the Newcastle, Hunter Valley and Central Coast region. Membership in the New South Wales Branch (which includes the Australian Capital Territory) exceeds 65,000.

3.0.3 In New South Wales and the Australian Capital Territory, the SDA has coverage of the following occupational areas:

- Retail, including:
  - Shop Assistants
  - Reserve / Backdock employees
  - Clerical employees
  - Butchers
  - Meat packers
  - Bakers
  - Pastrycooks
  - Bakery Assistants
  - Apprentices
  - Security (non-contract)
  - Cleaning (non-contract)
- Fastfood
- Pharmacy
- General Distribution and Warehousing
- Pharmaceutical Drug Manufacturing and Distribution
- Cosmetic Manufacturing and Distribution
- Van Sales
- Photographic Industry
- Vehicle Repair Services and Retail
- Modelling and Mannequin
- Motor Vehicle Sales
- Shoe and Boot Repairing

3.0.4 The vast majority of members are engaged in the retail industry. This broadly encompasses the following variety of retail formats:

- Supermarkets and grocery stores;
- Discount department stores;
- Department stores;
- Takeaway and fast food outlets;

- Specialty food;
- Specialty clothing stores;
- Furniture and electrical stores;
- Recreational goods stores;
- Hardware stores;
- Other specialty stores;
- Petrol service stations;
- Pharmacies;
- "Big box" format outlets; and
- Other independent / small retail.

3.0.5 There are variations between enterprises and between subsectors within the industry, but the majority of the membership can be characterised as young, female and casual or part-time.

3.1 DEMOGRAPHICS

3.1.1 The membership of the SDA is characterised by the following categories of employees:

Table 1

Characteristic	***NSW Branch Membership[13]***
Under 21 years	32.9%
Under 25 years	48.4%
Female	62.8%
Casual	58.7%
Part-time	19.0%
Full-time	15.0%

3.1.2 The SDA notes that these membership statistics are very similar to the *"Casuals by Industry, NSW, 2001"* (HILDA Wave 1) statistics. The HILDA data appears to indicate slightly lower overall levels of participation in the "Retail Trade" industry by casual employees (48.5%) compared to the Branch's membership statistics above. This is likely to reflect the lower proportion of employees engaged in management, buying, human resources, logistics and other "non-shop floor" positions, in the industry, who are union members. These employees are, in the SDA's experience, also more likely to be permanent (full-time or part-time), male and older. SDA members are overwhelmingly employed at the base (100%

[13] 7.3% of the Branch was not classified full-time, part-time or casual at the time these statistics were gathered (May 2004). This is due to new members leaving such details incomplete on membership cards when joining.

relativity) rate of pay, supervisory levels, specialist rates or department manager rates.

3.1.3 The *"Casuals by Occupation, NSW, 2001"* (Hilda Wave 1) statistics also indicate that 58.4% of "Elementary Clerical, Sales & Service Workers" are casual. This data compares very closely with the Branch's membership statistics above.

3.1.4 The SDA represents substantial numbers of young, female, part-time and / or casual retail workers and is, therefore, ideally positioned to make comment on the matters raised in the inquiry's terms of reference, due to the high proportion of its membership falling within the categories of persons identified within those terms.

3.2 PRINCIPLES

3.2.1 The SDA is committed to promoting, improving and safeguarding the interests of its members industrially, morally, socially, legally, intellectually and otherwise by all lawful means.

3.2.2 The Commonwealth WorkChoices legislation fundamentally attacks those interests.

3.2.3 The SDA submits that these extreme laws undermine the dignity of workers, fail to ensure due respect for workers, foremost, as human beings, and suppress industrial fairness in the workplace.

3.3 EXPERIENCE

3.3.1 To candidly assess the impact of the Commonwealth WorkChoices legislation, a useful starting point is to examine the experiences of workers, including young persons, casuals and women, under the pre-reform legislation:

Aldi Supermarkets

3.3.2 Aldi is the 10th largest retailer in the world. It has quickly established a foothold in the Australian grocery market since commenced trading with one store in Marrickville, NSW, in January 2001. It has now grown to over 100 stores nationally. Aldi has amassed an estimated $700 million in sales in Australia and now controls 3% of national grocery sales.

3.3.3 The SDA understands that every single Aldi store assistant is employed on an Australian Workplace Agreement.

3.3.4 Whilst Aldi originally offered a competitive base hourly rate of pay ($17.50 per hour), which by and large compensated most employees for the loss of penalty rates on weekends and evenings, the wages offered in Aldi's second generation AWAs have effectively frozen wages growth with minimal increases incorporated

in the agreement. Store assistant remuneration in the second generation AWAs[14] currently on offer provide the following:

Table 2

	Year 1	Year 2	Year 3
Rate per hour	$18.25	$18.75	$19.20

3.3.5 A productivity bonus, estimated to be between $2.50 to $3.00 per hour, was also available to employees in the first generation AWA; no such bonus is incorporated into the AWAs now on offer.

3.3.6 Base hourly rates of pay have increased by 9.7% in just over 5 years. This is less than inflation, which has grown by 15.6% during the same period.[15] The real wages of Aldi store assistants have dwindled. Aldi wages also have not kept pace with either inflation or wage increases in the range of 3-4% per annum secured in the retail industry more broadly over the past 5 years.

3.3.7 The SDA has observed that the majority of Aldi store assistants are women.

3.3.8 Prior to the commencement of the WorkChoices amendments, all new Aldi employees were offered Australian Workplace Agreements, made pursuant to Section 170VF of the *Workplace Relations Act* 1996 (Cth) (pre-reform), prior to commencing employment. It was a condition of employment that they accept and sign the AWA. No alternative industrial instrument was offered, be it:

- The *Shop Employees' (State) Award* (NSW) made under Section 10 of the *Industrial Relations Act* 1996 (NSW);
- A State Enterprise Agreement made under Section 29 of the *Industrial Relations Act* 1996 (NSW);
- A Federal Certified Agreement (Union collective) made under Section 170LJ of the Workplace Relations Act 1996 (Cth) (pre-reform); or
- A Federal Certified Agreement (Non-union collective) made under Section 170LK of the Workplace Relations Act 1996 (Cth) (pre-reform).

3.3.9 The Union is unaware of any Aldi employee, working as a store assistant in an Aldi Supermarket who has requested to negotiate, successfully negotiated or successfully renegotiated the terms of an Aldi AWA as offered by their employer.

3.3.10 The Union does not suggest that there is anything illegal in this conduct. Indeed, this is a lawful industrial tactic supported by the pre-reform Act and used effectively by Aldi with its primarily part-time, female workforce. There can be little doubt that a significant disparity in bargaining power exists in these circumstances. The conduct is, nevertheless, quite lawful and consistent with the *Burnie Port Corporation v Maritime Union of Australia* decision referred to in paragraph 2.2.5 above.

[14] Aldi Stores Australian Workplace Agreement (AWA) current as at March 2006
[15] ABS Consumer Price Index March 2001 to March 2006 quarters inclusive (Cat 6401.0)

3.3.11 The SDA suggests that "choice" and genuine bargaining are non-existent under both the pre-reform and amended federal legislation for Aldi employees.

Krispy Kreme

3.3.12 In July 2003, Krispy Kreme Australia Pty Ltd offered its existing workforce AWAs.

3.3.13 Krispy Kreme opened its first store at Penrith in May 2003 and initially engaged its non-managerial retail staff under the terms and conditions of the NSW *Shop Employees' (State) Award.*

3.3.14 The SDA was invited to review the AWA by apprehensive young workers and campaigned against the AWA on the basis that it undercut Award wages and conditions of employment, in particular removing penalty rates and loadings without sufficient compensation in the ordinary hourly rate of pay. The deficiencies included:

Table 3 Krispy Kreme wages:

	KRISPY KREME AWA ALL HOURS TRAINEE RATES	**SHOP EMPLOYEES' (STATE) AWARD***
19 year old Part-time Saturday rate	$12.40 per hour	$13.335 per hour
Adult (21 year old +) Full-time After Midnight (Overtime)	$15.50 per hour	$20.005 per hour (2 hours) $26.675 per hour (thereafter)
18 year old Part-time Sunday rate	$10.85 per hour	$14.005 per hour
16 year old Part-time Monday – Friday rate	$7.75 per hour	$6.67 per hour
Adult (21 year old +) Part-time Public Holiday rate	$15.50 per hour + fixed $75 or $150 depending on shift length	$33.34 per hour

Table 4 Krispy Kreme conditions:

	KRISPY KREME AWA	**SHOP EMPLOYEES' (STATE) AWARD**
Weekend Penalties	None	Saturday 25% Sunday 50%
Public Holidays	Flat rate + fixed $75 / $125 loading	250% rate

Overtime	Applies after 152 hours per 4 weeks 150% for first 40 hours OT 200% thereafter (i.e. 192 hours)	Applies after 38 hours per week / 152 hours per 4 weeks In excess of 5 (6) shifts per week Beyond 9 (11) hours per shift Before / After rostered shift Outside ordinary hours 150% for first 2 hours (per shift) 200% thereafter (per shift)
Part-time	By agreement up to 38 hours Capacity for unilateral reduction / increase	Minimum 9 hours and Maximum 30 hours per week
Maximum shift	10 hours 12 hours by agreement 14 hours for split shifts	9 hours 11 hours (once per week or more be agreement)
Consecutive Shifts	Maximum of 10	Maximum of 5 (6)
Laundry allowance	None	$8.30 per week or $5.00 per week
Union Picnic Day	No	Yes
Annual Leave Loading	None	17.5%
Grievance Procedure	Access to mediation Right to refuse representative No independent arbitration	Access to NSW Industrial Relations Commission Right to Union representation Conciliation & arbitration available

3.3.15 The experience of one Krispy Kreme worker illustrates the powerlessness of young people in workplace bargaining under the pre-reform Act. Ms Thea Birch Fitch made a submission to the Senate Inquiry into Workplace Agreements in 2005. Her submission is attached at **Annexure "C"**. The SDA recommends that the Committee closely note the experience of a young, female retail worker when asked to sign an AWA:

> "... *In July 2003, the Company convened a meeting during which it offered Australian Workplace Agreements to all employees working at Krispy Kreme Penrith ... They made us feel that the Agreements would be in everyone's best interests. After reading the proposed Agreement and discussing it with my family and workmates, I believed that I would be worse off signing the Agreement.*
>
> *Following the meeting I discussed the Agreement with two store managers. I said that I preferred to remain employed on the Award. I was told that if I didn't sign the Agreement I had no chance of being promoted to a manager, which I had previously expressed an interest in, and that there would be no guarantee of hours in the future. I was also promised that if I signed the Agreement I would be offered full-time hours. At first only part-time hours were offered, which I refused to sign.*

I had previously been a member of the union, the SDA, at Burger King so I sought its advice on the proposed Agreement. In the following days, the union reviewed the Australian Workplace Agreements and strongly recommended employees to reject the proposal ...

... Most of the employees were 15 to 18 years old and did not fully understand their rights and what was at stake. Most signed the Agreement. Even after the union volunteered to assist anyone who sought its representation most were too apprehensive to get involved even though they were by now aware that they would be paid less on weekends when most of them wanted to work.

I remained employed on the Shop Employees' (State) Award at this time. I was working full-time hours plus overtime. The deadline for signing the Agreements arrived and I did not want to sign the Agreement. I sat in the Manager's office in tears whilst I was told that I had to sign the Agreement or I wouldn't get any hours and I wouldn't be promoted.

I felt that I was left with no choice and signed the Agreement.

Having signed the Agreement, I was paid less for working the same hours each week than I would have been paid on the Award."[16]

3.3.16 The SDA represented a handful of young workers as their bargaining agent in this process and a meeting was convened between the parties in accordance with the pre-reform Act. The SDA pressed a raft of claims to improve the terms and conditions on offer in the AWA to lift it to at least Award standard.

3.3.17 The strategy of Kripsy Kreme in negotiating the terms of the AWA with SDA Officials at that time was to reject any claim of significance, agree to minor drafting matters and to accept that a handful of employees would refuse to sign the AWA and remain on Award conditions. The employer was seemingly content to rely upon staff turnover and natural attrition over of the forthcoming months to fully implement the AWA across its workforce. All new starters were offered employment contingent upon signing the AWA

3.3.18 Most young workers advised the SDA that they felt their existing casual hours of work were at risk if they failed to sign the AWA.

3.3.19 The SDA's experience is that young workers, women and casuals in the retail industry are at a significant bargaining disadvantage when an employer decides to introduce AWAs in the workplace. It is only well-organised, unionised workplaces that are generally capable of negotiating fair and reasonable terms and conditions of employment in either a collective agreement or an award.

[16] Ms Thea Birch Fitch, Submission to the 2005 Senate Inquiry into Workplace Agreements, 5 August 2005, Submission No. 13.

4 CRITICAL WORKCHOICES CHANGES

4.0.1 The Commonwealth WorkChoices legislation relies upon the corporations power under Section 51(xx) of the Constitution to regulate the industrial affairs of constitutional corporations and their employees. Subject to the pending decision in the States' High Court challenge to the legislation, many hundreds of thousands of employees, previously entitled to the benefit and protection of the NSW *Industrial Relations Act* 1996 and industrial instruments made under that Act, are now subject to the reach of these laws.

4.0.2 As noted above, there are numerous objectionable elements to the legislation. The SDA will focus on five critical changes:

- The elimination of minimum wage-setting powers from the functions of the Australian Industrial Relations Commission and referral of such powers to the newly established Australian Fair Pay Commission;
- The arbitrary and sweeping restriction of access to unfair dismissal rights;
- The abolition of the No-Disadvantage Test in the Workplace Agreement making process;
- The promotion of Australian Workplace Agreements ("AWAs") as the Government's preferred form of employment instrument; and
- The transitional treatment of NSW Award minimum terms and conditions.

4.0.3 The SDA submits that the detrimental impact of these five changes have the greatest relevance to the lives of ordinary NSW workers and their families.

4.1 A LIVING WAGE

4.1.1 Currently, award rates of pay are increased in accordance with annual National and State Wage Cases. The annual increases flow on to all workers covered by federal and state awards, whether they are a member of a trade union or not. Workers receiving over award rates of pay also often have the increases passed on to them by their employer, although mandatory absorption principles in more recent wage fixing principles at both a State and National level do not oblige the employer to do so.

4.1.2 The system of Awards and National and State Wage Cases has ensured that a "fair and reasonable" safety net was maintained for all workers.

4.1.3 Under the pre-reform *Workplace Relations Act* 1996 (Cth), the Australian Industrial Relations Commission was required to take economic factors such as inflation, economic growth, productivity and unemployment, into account in making its decisions. The AIRC would hear submissions and evidence from all interested parties, including the ACTU, employer associations, State and

Federal Governments, social welfare groups, the Treasury and the Reserve Bank. Following the hearing of all submissions, the Commission would make a decision. The NSW State Wage Case would subsequently proceed along similar lines giving appropriate weight to the federal decision. Since 1997, the state wage case increase awarded by the Industrial Relations Commission of New South Wales has replicated the federal safety net adjustment each year.

4.1.4 In recent years, both the State and Federal Commission have provided for pay rises ranging from $17 to $19 per week and representing approximately 3.5% to 3.8% increases for people on the minimum wage or the Award rate.

4.1.5 During the same period, the level of inflation has remained relatively low, and unemployment levels have continued to decline. There is no sound economic argument that the decisions of the NSW and Australian Industrial Relations Commissions have caused economic dislocation or serious impairment to the enterprises of employers.

4.1.6 The Federal Government, however, has consistently argued over the last decade that wage rises ought to be kept at approximately $8 to $12 per week. The effect of this would be to provide increases below the rate of inflation, thereby reducing the living standards of people on Award rates of pay.

4.1.7 Under the Commonwealth WorkChoices legislation, the power of the Australian Industrial Relations Commission to conduct the annual National Wage Case for all federal award employees has been removed.[17]

4.1.8 The Industrial Relations Commission of New South Wales shall continue to conduct the State Wage Case in accordance with the legislative framework provided by the NSW *Industrial Relations Act* 1996, although the scope and application of the case shall be much narrower due to the reduced pool of employers and employees subject to its decision.[18]

4.1.9 A new tribunal, interestingly called the Fair Pay Commission ("FPC"), will perform the task in the federal jurisdiction. It will consist of a small number of people appointed by the Government who will make decisions on Award rates from time to time but not necessarily on an annual basis.

4.1.10 The clear intent of this new arrangement is to reduce the rate of wage increases, and perhaps even to keep the growth of Award rates of pay below the rate of inflation, so that the purchasing power of Award rates is reduced over time.

4.1.11 The table below illustrates the Government's view of wage rises over the past nine years compared to the Commission's decisions. It reflects the extent to which workers on minimum wages will be worse off if the FPC follows the Government's preferred view in the future.

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[17] There is an exception for the residual and relatively small number of employees employed by unincorporated employers covered by federal awards (these employees continue to be covered by the federal jurisdiction for up to 5 years under the transitional arrangements of the legislation.

[18] Only employers that are non-constitutional corporations and bound by state awards are subject to the State Wage Case decision.

Table 5

Year	Government's Submission (increase per week)	Commission's Decision (increase per week)	The Gap (per week)
1997	$8	$10	$2
1998	$8	$14	$6
1999	$8	$12	$4
2000	$8	$15	$7
2001	$10	$13	$3
2002	$10	$18	$8
2003	$12	$17	$5
2004	$10	$19	$9
2005	$11	$17	$6
Total	**$85**	**$135**	**$50**

4.1.12 Full-time adult employees on minimum award wages would be $50 per week worse off if the independent umpire had accepted the Federal Government's submission.

4.1.13 Given the fact that past decisions of both the NSW and Australian Industrial Relations Commissions have not had any significant adverse impact on the economy, and have always taken into account all the economic submissions made by the various parties, this change in the wage fixing system, designed to lower the levels of wages over time, cannot be justified.

4.1.14 The lower the level of wages in Australia, the greater the burden on the Government in providing people with social security payments, and the greater the burden on charities such as St. Vincent de Paul and others in assisting people who cannot make ends meet.

4.1.15 The lower the level of wages for award dependent employees, who are more likely to be female and young, the greater the disparity in income between those with the skills, knowledge, experience and capacity to bargain for better wages and conditions and those without these.

4.1.16 The SDA suggests that the future practical application of this change will fail to meet the standard set by Justice HB Higgins in 1907:

> *"The standard of "fair and reasonable" must, therefore, be something else; and I cannot think of any other standard appropriate than the normal needs of the average employee, regarded as a human being living in a civilized community."*[19]

[19] Ex Parte HV McKay (1907) 2 CAR 1 at 4

4.1.17 If the suggestion that the FPC will ease future wage increases more in line with Federal Government desires is doubted, one need only read the comments attributed to Professor Ian Harper, the newly appointed Head of the AFPC, to confirm that a cut in real wages is a possible outcome in the future:

> *"The Chairman of the Fair Pay Commission, Ian Harper, has conceded a cut in real wages for Australia's 1.6 million low-paid workers is "certainly an outcome that could arise" when the new body hands down its first determination this year."*[20]

4.1.18 As referred to earlier in this submission, the Australian Government Treasury also suggests that lower wage increases than those otherwise granted by the independent umpire, the AIRC, are likely to be granted in the future:

> *"... increases in minimum wages are likely to be lower than they would have been under the adversarial AIRC system ..."*[21]

4.1.19 To fully appreciate the impact that lower safety net increases shall have on ordinary workers it is important to appreciate that National and State Wage Case increases provide the floor not only for minimum wage earners directly affected by the subject awards but also for other unskilled and semi-skilled workers covered by workplace agreements. In the retail industry, for example, many tens of thousands of young workers and women indirectly depend upon fair and reasonable safety net decisions to ensure that wage increases negotiated in their agreements meet the current standard. Wage increases secured in major retail certified agreements over the last decade have undoubtedly been closely linked to the level of safety net increases granted by the AIRC, with some additional increases attributable to productivity gains and profitability. For example:

Table 6

	Shop Employees' (State) Award	Coles Supermarkets	Woolworths Supermarkets	Inflation
Wage Increases (since March '96)	$143	$181	$178.97	-
%	35.77%	42.97%	42.47%	27.66%
Real Increase (%)	8.11%	15.32%	14.82%	-

4.1.20 A comparison of increases in the ordinary weekly wage of full-time adult employees covered by the *Shop Employees' (State) Award*, the *Coles Supermarkets Australia Pty Limited Retail Agreement 2005* and the *Woolworths Supermarkets NSW / ACT Agreement 2004* contrasted against inflation over the last decade (during the operation of both the pre-reform *Workplace Relations Act* 1996 (Cth) and the *Industrial Relations Act* 1996 (NSW)), attached at **Annexure "D"**, illustrates these figures.

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[20] *"Low-paid may get less, says Fair Pay chief"*, Australian Financial Review, Friday 17/2/2006, p 3.
[21] Australian Government Treasury Executive Minute, 6 October 2005, p 3.

4.1.21 Finally, the Committee should reflect upon the ordinary life circumstances and challenges faced by those who depend on minimum award wages to survive and provide for a family. In 2005, Ms Louise Herrmann, an employee of Spotlight Wollongong, gave evidence in the NSW State Wage Case 2005. In her affidavit, attached at **Annexure "E"**, Ms Hermann states:

> *"My full name is Louise Maree Herrmann ... I have three dependents living at home including my disabled husband and two sons, aged 7, who suffers from severe haemophilia A, and, 0 years old ...*
>
> *... My income restricts our quality of life by providing just enough on top of social security payments for the necessities of life, with little left for recreation or leisure. There are many things that we would like to do that others take for granted. We simply cannot afford to do those things because of the limitations imposed by our income. On my present income it is difficult to afford holidays, a new car, home improvements or any other items that might improve our standard of living. Recent repairs to the house, to replace rotting wood, could only be afforded through redrawing on the savings on our mortgage. The next item that we need to replace is the family car. It is over 20 years old, worn out and becoming unreliable. It is something to aim towards in the next 2 years unless something untoward intervenes. It would be nice to spend a little extra money on the boys if we had more time and a better wage."*[22]

4.2 UNFAIR DISMISSALS

4.2.1 Under either State or Federal industrial law, New South Wales workers, who have been unfairly dismissed, have had a right to go to a tribunal and have their matter determined by an independent umpire. This fundamental right has been severely circumscribed by the commencement of WorkChoices and removed for many workers.

4.2.2 With the commencement of the Commonwealth WorkChoices legislation:

(a) Employees in businesses with 100 employees or less (including full-time, part-time and regular casual employees with more than 12 months service) have been jurisdictionally barred from making unfair dismissal applications;[23]

(b) The qualifying period of employment during which new employees are prevented from pursuing unfair dismissal applications has been increased from 3 months to 6 months;[24] and

(c) An employer may dismiss an employee for "genuine operational reasons" (or for reasons that include genuine operational reasons)[25]. This further contentious aspect of the legislation is most likely to be litigated before the Commission and Courts in the coming months to resolve the scope of this new power. This will ultimately determine to what extent

[22] Affidavit Louise Maree Herrmann, NSW State Wage Case 2005
[23] Section 643(10), (11) and (12) of the *Workplace Relations Act* 1996
[24] Section 643(6) and (7) of the *Workplace Relations Act* 1996
[25] Section 643(8) and (9) of the *Workplace Relations Act* 1996

unscrupulous employer may use the new laws to prevent dismissed workers from exercising basic rights.

4.2.3 About four million workers – nearly half the nation's workforce – have lost their right to pursue unfair dismissal claims.

4.2.4 The commencement of the WorkChoices legislations means that an employer with less than 100 employees could dismiss with impunity – using any concocted reason – any employee who refuses to accept a new Australian Workplace Agreement containing nothing but the legislation's minimum entitlements discussed below.

4.2.5 The SDA submits that if the current unfair dismissal laws are not working satisfactorily, they should be amended to make them work better – not abolished altogether for half the nation's workforce.

4.2.6 The International Labour Organisation's *"Convention Concerning Termination of Employment at the Initiative of the Employer 1982"* states:

> *"The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based upon the operational requirements of the undertaking, establishment or service."*[26]

> *"The employment of a worker shall not be terminated for reasons related to the worker's conduct or performance before he is provided with an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity."*[27]

4.2.7 The SDA submits that the amendments to the WorkChoices legislation are inconsistent with the ILO Convention. Whilst the ILO Convention allows for a number of exclusions for different categories of employees from the scope of these principles, the SDA submits that the WorkChoices legislation stretches the use of these exclusions so far as to make them essentially meaningless. The exclusion of 4 million workers from the scope of these laws makes the capacity to access unfair dismissal applications a privilege rather than a right, the exception rather than the rule. It cannot be seriously contended that the ILO Convention was intended to apply in this confined manner.

4.2.8 Two tiers of justice have now been established under the WorkChoices legislation for unfairly dismissed workers; that is, those who work for employers with more than 100 employees will retain curtailed rights and those who work for employers with 100 employees or less have none.

> *"It is expected that this exclusion will reduce unfair dismissal claims by between 75% to 90%."*[28]

4.2.9 The SDA is profoundly opposed to this artificial distinction; any unfair sacking remains morally unfair irrespective of whether the employer has 1 or 10,000

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[26] ILO *"Convention Concerning Termination of Employment at the Initiative of the Employer 1982"*, Article 4
[27] Ibid, Article 7
[28] Macken J, *"Macken on Work Choices"*, January 2006, p 8.

employees. The law should operate equitably to protect all employees from such conduct.

4.3 AGREEMENT MAKING AND THE ABOLITION OF THE NO DISADVANTAGE TEST (NDT)

4.3.1 Under the pre-reform *Workplace Relation Act* 1996 (Cth), any union certified agreement, non-union certified agreement or Australian Workplace Agreement can only be registered if it passes a "No-Disadvantage" Test.[29]

4.3.2 This Test means that the proposed Agreement is compared with the State or Federal Award that, in the absence of the Agreement, would apply to the worker or the enterprise as the case may be. The Test means a comparison is made between the wages and the working conditions in the Award and those in the proposed Agreement. If it is clear that the Agreement is overall at least equal to the Award, the Agreement will be certified and become legally operative.

4.3.3 Under the WorkChoices legislation the No-Disadvantage Test has been abolished.

4.3.4 Instead of comparing a proposed workplace agreement with the Award which would otherwise apply, the comparison is instead made against the Australian Fair Pay and Conditions Standard ("AFPCS")[30]:

- Minimum wage rates as determined by the Australian Fair Pay Commission;
- Annual leave of four weeks, pro rata and cumulative (with the ability to cash out two weeks at the employee's request);
- Personal / carer's leave (including sick leave) of 10 days pro rata and cumulative, plus an additional 2 days of unpaid carer's leave and 2 days of paid compassionate leave;
- Parental leave of one year unpaid; and
- Maximum ordinary working week of 38 hours (with the capacity to average those hours over a period not exceeding 12 months).

4.3.5 Critically, unlike the pre-reform approach, there is no obligation to "compensate" an employee with a higher weekly or hourly rate of pay for the modification to or exclusion of other award conditions of employment, such as:

- Rest breaks;
- 17.5% annual leave loading (worth 70% of a week's pay per year);
- Public holiday penalties and entitlements;
- Expense, work and disability allowances;
- Overtime and shift loadings;
- Penalty rates;
- Rostering conditions;
- Blood donor leave, community leave etc.; and
- Redundancy and severance entitlements.

[29] Section 170XA of the pre-reform *Workplace Relations Act* 1996
[30] Section 173 of the *Workplace Relations Act* 1996

4.3.6 The significance of the abolition of the No-Disadvantage Test and the introduction of this new AFPCS five minimum conditions is that employees may be required to work under workplace agreements where some or all of the above provisions are missing.

4.3.7 There will be a powerful economic incentive for an employer to force his or her employees into a new workplace agreement containing only the Government's five basic entitlements, in order to gain a competitive advantage in lower labour costs over competitors. Once one employer does this, its competitors will be forced to follow suit. This creates in each industry a "race to the bottom" caused by the Federal Government's WorkChoices legislation.

4.3.8 Eventually, all workers are worse off, having lost many of their basic entitlements. Since many of the entitlements that may be lost are monetary (e.g. penalty rates, shift loadings, annual leave loading, payment for public holidays, casual loadings, work and expense-related allowances, etc), there will be a real wage cut for affected workers.

4.3.9 This is simply unacceptable for an Australian worker in our current environment and cannot be justified under any reasonable argument.

4.3.10 Upon the termination of their workplace agreement, the employee is entitled to the AFPCS and *"protected award conditions as defined in section 354 (disregarding any exclusion or modification of those conditions made by the agreement that was terminated)"*.[31] The net effect of this provision is that when a workplace agreement is terminated, the relevant employee is entitled to the following:

(a) Australian Fair Pay and Conditions Standard[32]:

- Minimum wage rates as determined by the Australian Fair Pay Commission;
- Annual leave of four weeks, pro rata and cumulative (with the ability to cash out two weeks at the employee's request);
- Personal / carer's leave (including sick leave) of 10 days pro rata and cumulative, plus an additional 2 days of unpaid carer's leave and 2 days of paid compassionate leave;
- Parental leave of one year unpaid;
- Maximum ordinary working week of 38 hours (with the capacity to average those hours over a period not exceeding 12 months); and

(b) Protected Award Conditions[33]:

- Rest breaks;
- Incentive-based payments and bonuses;
- Annual leave loadings;
- Observance and payment for public holidays generally observed in any State, Territory or region (including substituted days);

[31] Section 399(3)(b) of the *Workplace Relations Act* 1996
[32] Part 7 of the *Workplace Relations Act* 1996
[33] Section 354 of the *Workplace Relations Act* 1996

- Expense, work and disability allowances;
- Overtime and shift loadings;
- Penalty rates;
- Outworker provisions; and
- Any other matter specified in the regulations.

4.3.11 However, if the terminated workplace agreement modified or removed any of the "protected award conditions" detailed above, the employee is no longer entitled to those conditions upon the termination of that agreement. For example, if the workplace agreement expressly excluded all conditions of employment described as "protected award conditions" the employee shall no longer be entitled to any of those conditions upon termination of that agreement. The AFPCS alone shall apply in such circumstances.

4.3.12 The abolition of the no-disadvantage test and substitution with the deficient AFPCS is a recipe for reduced wages, as demonstrated in Victoria and New Zealand for retail workers during the last 15 years.

4.4 AWAs – AUSTRALIA'S WORST AGREEMENTS

4.4.1 In the Federal Parliament on 26 May, the Prime Minister John Howard said:

> *"We want to further encourage the spread of Workplace Agreements."*

4.4.2 The Federal Government's Workplace Relations Minister, Kevin Andrews, was quoted in the *Australian Financial Review* on 22 June 2005 as saying:

> *"It's difficult to see why too many people would remain on awards if one looked forward five or ten years."*

4.4.3 The very essence of the Commonwealth WorkChoices legislation is to encourage and assist employers to move their workforce from collective Awards or Agreements onto individual contracts. The legislation does this by allowing employers to offer and for employees to accept individual contracts, Australian Workplace Agreements, during the life of any other workplace agreement or award under the Act. Section 348(2) of the Act provides:

> *"A collective agreement has no effect in relation to an employee while an AWA operates in relation to the employee."*

4.4.4 This puts employers in a very powerful position whereby workers will have to compete against each other, one on one, for jobs. And the only legal minimum floor would be a minimum hourly rate of pay and four statutory standards provided in the AFPCS. It is very clear that wages and working conditions will be reduced over time.

4.4.5 As described above, some employers already automatically sign new employees onto Australian Workplace Agreements. No negotiation, no choice. The SDA submits that for unskilled and semi-skilled labour a "take it or leave it" atmosphere already exists such that if faced with the prospect of accepting an

inferior AWA or losing your job or hours of work, in the case of casual employees, the inferior AWA will prevail.

4.4.6 There's no choice for workers who need an income to feed their family and pay the bills.

4.5 THE TRANSITIONAL TREATMENT OF NSW AWARDS

4.5.1 Many New South Wales workers, and incidentally some employers, who were generally satisfied with their state award wages and conditions, have been unceremoniously dragged into the federal jurisdiction by virtue of their employer's constitutional corporate status.

4.5.2 The federal legislation operates to take and "freeze" the state award as made and varied prior to 27 March 2006, when transitional arrangements of WorkChoices came into operation.

4.5.3 WorkChoices calls these transitional state awards applying to employees of constitutional corporations "Notional Agreements Preserving State Awards" ("NAPSAs").

4.5.4 Employees bound by NAPSAs are entitled to retain their existing award terms and conditions of employment, subject to:

- Where any award term or condition in the NAPSA is less generous than the AFPCS, the employee shall be entitled to the AFPCS in lieu of that term or condition;[34]

- The NSW Industrial Relations Commission is no longer entitled to exercise any powers or functions conferred upon it by the NAPSA;[35]

- The dispute resolution process in the NAPSA is void and the model dispute resolution process in the Workplace Relations Act 1996 applies in lieu of that procedure;[36]

- Prohibited content, as prescribed by the Regulations, in the NAPSA is void;[37]

- The NAPSA ceases to operate after 3 years;[38] and

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[34] Clause 46 of Division 5 of Part 3 of Schedule 8 – Transitional Treatment of State Employment Agreements and State Awards of the *Workplace Relations Act* 1996

[35] Clause 35 of Division 1 of Part 3 of Schedule 8 – Transitional Treatment of State Employment Agreements and State Awards of the *Workplace Relations Act* 1996

[36] Clause 36 of Division 1 of Part 3 of Schedule 8 – Transitional Treatment of State Employment Agreements and State Awards of the *Workplace Relations Act* 1996

[37] Clause 37 of Division 1 of Part 3 of Schedule 8 – Transitional Treatment of State Employment Agreements and State Awards of the *Workplace Relations Act* 1996

[38] Clause 38A of Division 2 of Part 3 of Schedule 8 – Transitional Treatment of State Employment Agreements and State Awards of the *Workplace Relations Act* 1996

- There is limited capacity for the AIRC to vary any term of the NAPSA. This is restricted to the removal of ambiguities or uncertainties, the removal of discrimination and the removal of prohibited content.[39]

4.5.5 The result of this transitional treatment of state awards is that they are effectively frozen and excised of all content to which the Federal Government holds an ideological objection.

4.5.6 The following Award conditions which apply in at least one or more SDA State NSW state common rule awards are, therefore, void:

- Union fee deductions;
- Trade Union Training Leave;
- Dispute / Grievance Procedures;
- Right of entry; and
- Secure Employment Test Case provisions.

4.5.7 Of particular concern is the future of safety net increases, to be determined by the Fair Pay Commission rather than the Industrial Relations Commission of New South Wales. As discussed above, workers on NAPSAs will in the future rely upon the Fair Pay Commission for wage increases (the quantum, timing and scope of application of which are yet to be determined).

4.5.8 Of further concern is the model dispute resolution process that is deemed to operate in the NAPSA, which does not provide for any guaranteed conciliation and arbitration by an independent umpire such as the NSWIRC or AIRC. This is a formula for unresolved conflict in the workplace:

> ***"Division 2 Model dispute resolution process***
>
> ***SECTION 694 MODEL DISPUTE RESOLUTION PROCESS***
>
> *(1) This Division sets out the* ***model dispute resolution process.***
> ...
>
> ***SECTION 695 RESOLVING DISPUTE AT WORKPLACE LEVEL***
>
> *The parties to a dispute must genuinely attempt to resolve the dispute at the workplace level.*
>
> *Note: This may involve an affected employee first discussing the matter in dispute with his or her supervisor, then with more senior management.*
>
> ***SECTION 696 WHERE DISPUTE CANNOT BE RESOLVED AT WORKPLACE LEVEL***
>
> ***Alternative dispute resolution process using an agreed provider***
>
> *(1) If a matter in dispute cannot be resolved at the workplace level, a party to the dispute may elect to use an alternative dispute resolution process in an attempt to resolve the matter.*

[39] Division 3 of Part 3 of Schedule 8 – Transitional Treatment of State Employment Agreements and State Awards of the *Workplace Relations Act* 1996

(2) The alternative dispute resolution process is to be conducted by a person agreed between the parties in dispute on the matter.

Where parties cannot agree on a provider

(3) If the parties cannot reach agreement on who is to conduct the alternative dispute resolution process, a party to the dispute on the matter may notify the Industrial Registrar of that fact.
(4) On receiving notification under subsection (3), the Industrial Registrar must provide the parties with the prescribed information.
(5) If the parties cannot agree on who is to conduct the alternative dispute resolution process within the consideration period, a party to the dispute on the matter may apply to the Commission to have the alternative dispute resolution process conducted by the Commission.
(6) If an alternative dispute resolution process is used to resolve a dispute on a matter, the parties to the dispute must genuinely attempt to resolve the dispute using that process.

(7) In this section:

***consideration period** is a period beginning on the last day on which the Industrial Registrar gives the prescribed information to a party to the dispute on the matter and ending 14 days later.*

SECTION 697 CONDUCT DURING DISPUTE

(1) An employee who is a party to a dispute must, while the dispute is being resolved:

(a) continue to work in accordance with his or her contract of employment, unless the employee has a reasonable concern about an imminent risk to his or her health or safety; and
(b) comply with any reasonable direction given by his or her employer to perform other available work, either at the same workplace or at another workplace."

4.5.9 The capacity under the NSW *Industrial Relations Act* 1996 to readily access the assistance of the NSWIRC is useful to both employers and employees when protracted or difficult disputes arise. The knowledge of both parties that the Commission held the powers and functions to arbitrate such disputes, if necessary also ensured that industrial disputation remained within reasonable limits and grievances were resolved. WorkChoices is likely to operate in a manner whereby such disputes fester and deteriorate because there is no capacity within this model procedure to ultimately determine the matter.

4.5.10 Minimum award wages and conditions of employment have substantially remained "fair and reasonable" in NSW because there is an entrenched legislative guarantee upheld by an independent umpire, the Industrial Relations Commission of New South Wales.

4.5.11 The transitional treatment of state awards under WorkChoices is most accurately described as instruments that are gutted, frozen, exported and disposed of within three years.

5 VULNERABLE WORKERS IN NSW

5.0.1 WorkChoices relies upon the proposition that all workers are in an equal bargaining position with their employer. It is premised on the assumption that every worker has the capacity to freely and proficiently negotiate the terms and conditions of employment with their employer or prospective employer.

5.0.2 This assumption is false. It is sheer fantasy.

5.0.3 Many workers in unskilled to semiskilled occupations are young, inexperienced and / or lack sufficient knowledge and confidence to effectively bargain on an individual basis with their employer.

5.0.4 These workers are also under significant pressure to accept the terms and conditions offered and, due to the relatively low entry point in the labour market for unskilled and semiskilled work, they are genuinely at risk of another person accepting the offer if that person should not.

5.0.5 Young persons, women, workers with family responsibilities, regional workers and casuals are all vulnerable employees at risk of suffering a reduction in wages, conditions and standard of living.

5.1 YOUTH

5.1.1 The Federal Government launched its wasteful and misleading $55 million advertising campaign promoting the alleged benefits of the WorkChoices legislation with the release of an information booklet *"WorkChoices – A Fairer, Simpler National Workplace Relations System"* on 9 October 2005.

5.1.2 The fictional example of Billy appears at page 15 of the booklet:

> ***"EXAMPLE***
>
> *Billy is an unemployed job seeker who is offered a full-time job as a shop assistant by Costas who owns a clothing retail store in Canberra. The clothing store is covered by a federal award. The job offered to Billy is contingent on him accepting an AWA.*
>
> *The AWA Billy is offered provides him with the relevant minimum award classification wage and explicitly removes other award conditions.*
>
> *As Billy is making an agreement under WorkChoices the AWA being offered to him must at least meet the Fair Pay and Conditions Standard.*
>
> *The AWA Billy is offered explicitly removes award conditions for public holidays, rest breaks, bonuses, annual leave loadings, allowances, penalty rates and shift/overtime loadings.*

Billy has a bargaining agent assisting him in considering the AWA. He understands the details of what is in the AWA and the protections that the Fair Pay and Conditions Standard will give him including annual leave, personal/carer's leave, parental leave and maximum ordinary hours of work. Because Billy wants to get a foothold in the job market, he agrees to the AWA and accepts the job offer."

5.1.3 The SDA respectfully submits that this example is pivotal to the debate between proponents of the new laws (the Howard Government and employer bodies) and those in vigorous opposition (including the ALP, Democrats, Greens, Unions, churches, social welfare agencies and a wide range of community groups).

5.1.4 The Government asserts, without reliable evidence, that the laws will not only strengthen the economy but will *"reduce unemployment and increase workforce participation, particularly for women, youth and older men and reduce long term unemployment"*.[40] The reality is that there is no evidence to support this assertion:

> *"The Government asserts that jobs and productivity will grow as a result of the Bill. On the evidence available from existing research there is no solid research basis to give confidence that this Bill will address these economic and social problems ..."*[41]

5.1.5 On the other side of the equation, young workers compelled to accept an AWA which removes award conditions for public holidays, rest breaks, bonuses, annual leave loadings, allowances, penalty rates and shift/overtime loadings, such as Billy's example will lose 14.75% of their earnings compared to existing Award conditions. See **Annexure "F"** for the basis of this calculation.

5.1.6 Under WorkChoices the Federal Government supports and facilitates arrangements whereby "fair and reasonable" terms and conditions of employment, for young people such as Billy, are forfeited to secure employment.

5.1.7 The insufferable AWAs offered to young female workers, Amber Oswald (see **Annexure "G"** and paragraphs 2.2.2 to 2.2.4) and Thea Birch Fitch (see **Annexures "C", "H"** and paragraphs 3.3.12 to 3.3.19), clearly demonstrate that some employers are intent upon fully utilising these radical laws to the detriment of their existing workforce and to reduce labour costs rather than to increase job opportunities for young people. The claims of the Howard Government in this context are very hollow indeed.

5.2 WOMEN

5.2.1 Will women be better off under the WorkChoices laws?

5.2.2 Given that ABS statistics irrefutably confirm the average hourly earnings of non-managerial female employees engaged on AWAs is substantially less than that earned by their counterparts on collective agreements, it is imprudent to reason

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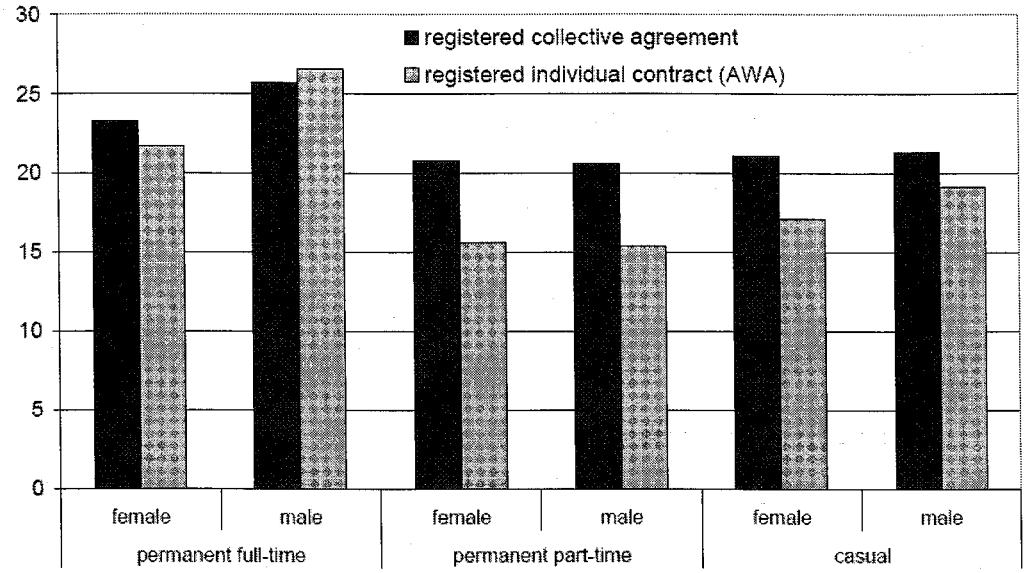
[40] ACCI, *"The Economic Case for Workplace Relations Reform"*, Position Paper, November 2005, p 8.

[41] Bamber G et al, *"Research evidence about the effects of the Work Choices Bill"*, Submission to the Inquiry into the Workplace Relations Amendment (Work Choices) Bill 2005 by a group of 151 Australian Industrial Relations, Labour Market and Legal Academics, November 2005, p 43.

that the encouragement of the spread of AWAs coupled with further deregulation under WorkChoices will lead to better wages.[42]

Average hourly earnings, non-managerial employees by method of setting pay, May 2004



5.2.3 These statistics, sourced from ABS Cat No. 6306.0, demonstrate that if you are a permanent full-time male you will on average earn marginally more on an AWA than your collective agreement counterpart. Every other category of employee, male or female, full-time, part-time or casual, will earn less.

5.2.4 The Committee should note that these statistics do not take into consideration any loss or reduction in conditions of employment. The SDA submits that, given conditions of employment are regularly traded away for wage increases in AWAs, the comparison away is likely to deteriorate further in the case of AWAs if conditions of employment were also considered.

5.2.5 In a submission to the 2005 Senate Inquiry into Workplace Agreements the Office of the Employment Advocate ("OEA"), now responsible under WorkChoices for all federal workplace agreements, analysed the same ABS data (see Figure 3 below)[43].

5.2.6 The OEA submission confirmed that in the retail industry female wages as a percentage of male wages were:

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[42] Source: Peetz D, *"The Impact on Workers of Australian Workplace Agreements and the Abolition of the 'No Disadvantage' Test"*, p. 12.

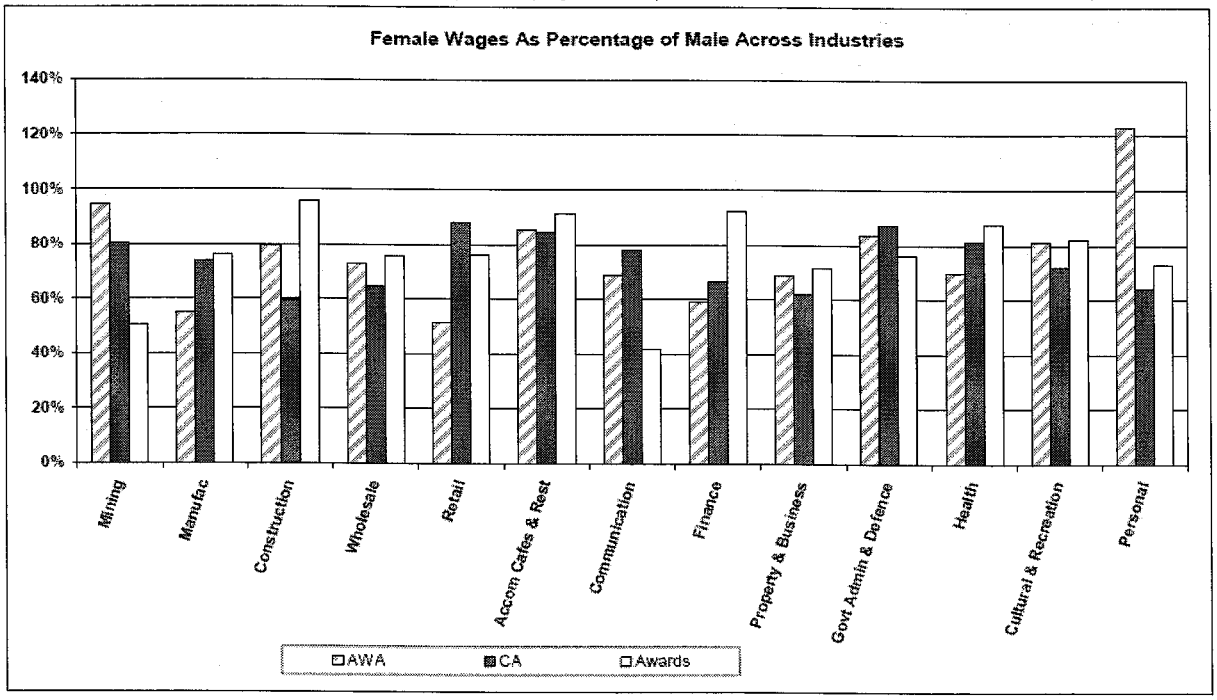
[43] Office of the Employment Advocate, Submission No. 19 to the 2005 Senate Inquiry into Workplace Agreements, p 39.

Table 7

	Female Wages as a percentage of Male
Awards	Almost 80%
Certified Agreements	Almost 90%
Australian Workplace Agreements	Just over 50%

5.2.7 The SDA submits that the analysis conducted by both Professor Peetz and the OEA lead to the irrevocable conclusion that the pre-reform *Workplace Relations Act* 1996 has operated in the retail industry to exacerbate the wages gender gap for women on AWAs and to improve the gap for women covered by certified agreements.

Figure 3: Female to male earnings ratio (AWTE) by industry



Source: ABS *Employee Earnings and Hours* survey (Cat. 6306.0), May 2004 (unpublished data)

5.3 WORKERS WITH FAMILY RESPONSIBILITIES

5.3.1 The Federal Government claims that WorkChoices will provide *"both protection and flexibility to help Australians meet their work and family responsibilities".*[44]

5.3.2 To this end, one of the objects of the WorkChoices legislation is set out in the new Section 3 (l) *"assisting employees to balance their work and family responsibilities effectively through the redevelopment of mutually beneficial work practices with employers".*

[44] Hon Kevin Andrews MP, Commonwealth Parliamentary Debates, 2/11/05, p 16.

5.3.3 To the contrary, WorkChoices undermines the capacity of NSW workers and their families to meet the increasingly difficult challenge to balance these often competing interests. It does so in a range of ways of which three deserve particular attention.

Family Provisions Case 2005

5.3.4 WorkChoices establishes a Fair Pay and Conditions Standard which includes 1 year of parental leave. In 2005 both the AIRC[45] and the NSWIRC[46] handed down landmark test case judgments in the Family Provisions Cases 2005. The decisions extended the range of flexible and family friendly working conditions in both federal and state awards. Specifically, the NSW decision, which essentially reflected the federal decision, granted award variations as follows:

> *"The decision provides employees with a right to request specific family-related leave and imposes an obligation on employers to grant the request unless there are demonstrable reasons of hardship.*
>
> *The following award provisions can now be requested by employees:*
>
> - *increase simultaneous unpaid parental leave to eight weeks*
> - *extend unpaid parental leave from 52 weeks to 104 weeks*
> - *permit a return from parental leave on a part-time basis until the child school reaches school age.*
>
> *The employer must consider the request, having regard for the employee's circumstances, and may only refuse the request on the grounds of costs, lack of adequate replacement staff, loss of efficiency and the impact on customer service.*
>
> *The decision also imposes an obligation on employers to inform an employee on parental leave about any significant changes to the workplace. Employees incur a reciprocal obligation to inform their employer about any significant matter that may influence the duration of parental leave or an intention to request a return to work on a part-time basis.*
>
> *The decision also granted an increase in the amount of time annual leave can be carried forward, from one to two years. It also increases the number of single annual leave days that may be taken per year for family-related purposes from five to ten days.*
>
> *The agreement, settled through conciliation, granting employees 10 instead of five days carer's leave, as well as 48 hours emergency leave for casuals, was approved."*[47]

5.3.5 The refusal of the Federal Government to encompass this new test case standard in the Australian Fair Pay and Conditions Standard demonstrates that the Federal Government is not committed to improving the work / family balance for thousands of NSW families but is intent upon entrusting such matters to the

[45] Family Provisions Case 2005, AIRC Full Bench, Melbourne, 8 August 2005 [PR082005]
[46] Family Provisions Case 2005, NSWIRC Full Bench, Sydney, 19 December 2005 [2005] NSWIRComm 478
[47] Source: NSW Office of Industrial Relations

absolute discretion of employers (which opposed most elements of the federal test case decision),

5.3.6 The repudiation of this new minimum community standard means that NSW workers, who were previously entitled to more flexible and family friendly award conditions of employment, may now be employed on either collective workplace agreements or Australian Workplace Agreements which are not required under WorkChoices to guarantee these provisions.

Rostering Conditions and Hours of Work[48]

5.3.7 Section 226 of the *Workplace Relations Act* 1996 provides

> ***226 The guarantee***
>
> *"(1) An employee must not be required or requested by an employer to work more than:*
>
> *(a) either:*
>
> *(i) 38 hours per week; or*
>
> *(ii) subject to subsection (3), if the employee and the employer agree in writing that the employee's hours of work are to be averaged over a specified averaging period that is no longer than 12 months - an average of 38 hours per week over that averaging period; and*
>
> *(b) reasonable additional hours."*

5.3.8 This "guarantee" can and will have significant adverse impact upon workers and their families. The structure of this "guarantee" is that nothing more is offered than an average 38 hour week.

5.3.9 The sting in the tail of this guarantee is that there is no legislative protection offered to employees in relation to how the 38 hour week will be implemented. The structure of Section 226 enables the employer to average the 38 hours a week over a full year in the case of a permanent employee.

5.3.10 There is no guarantee that:

- Any worker will only work five (5) days out of every seven (7);
- A worker will have any day off in any week;
- Workers will have a right to have weekends off;
- Workers will be able to have public holidays off;
- Workers will have their hours of work set in single shifts each day;
- Preventing the employer from rostering workers to work several shifts on the same day;
- Preventing an employer from requiring a worker to work different shifts on different days so as to totally destroy a person's normal sleep patterns;
- An employee will have a regular roster;

[48] SDAEA, Submission to the Inquiry into the Workplace Relations Amendment (Work Choices) Bill 2005, No. 127, pp 18-19.

• A worker will have a standard pattern of hours of work over a one (1) year cycle;
• Preventing an employer from requiring an employee to work 84 hours in some week (i.e. seven shifts of twelve (12) hours each) whilst then rostering an employee, in other weeks, to work seven (7) hours (i.e. one (1) hour per day each day) over an applicable averaging period.
• Where an employee has a dispute with their employer about how the 38 hours per week is to be worked over a one year cycle that such a dispute can be resolved by an independent third party, making a binding decision which has regard to the needs of the worker and his/her family, and the needs of the business.

5.3.11 The litany of what is not contained in the guarantee shows that what is guaranteed is quite limited.

Family Income

5.3.12 The capacity for NSW workers with family responsibilities to balance those responsibilities with work also depends upon earning a decent income to provide for that family. As detailed earlier in this submission, WorkChoices is intended not only to reduce minimum wages in real terms in the future thereby reducing the capacity of workers to provide for their families but also facilitates the removal of monetary conditions of employment.

5.3.13 The impact of the removal of these conditions of employment on a typical part-time working mother in the retail industry is seen at **Annexure "I"**. Working a conventional pattern of hours on an AWA which removes all penalties and loadings otherwise applicable under the relevant Award, a working mother would earn 20.84% less than the Award standard.

5.3.14 WorkChoices will harm family incomes and, accordingly, make it even more difficult for NSW workers to provide for their families. Anecdotal evidence suggests that workers will seek second jobs in such circumstances to make ends meet and will consequently spend even less time with their families.

5.4 REGIONAL WORKERS

5.4.1 The SDA shares with the Committee an example of an Australian Workplace Agreement offered to both existing and new employees in regional New South Wales in May 2006.

5.4.2 Spotlight Coffs Harbour offered an Australian Workplace Agreement to Ms Annette Harris, an existing employee, on Monday, 22 May 2006, of copy of which is attached at **Annexure "J"**. A comparison of the AWA with the employee's existing award conditions appears below:

Table 8

Entitlement (Full time employee)	Shop Employees' (State) Award NSW	Spotlight AWA
Base Rate	$14.28 per hour	$14.30 per hour
Saturday Penalty Rate	125% = $17.85 per hour	$14.30 per hour
Sunday Penalty Rate	150% = $21.42 per hour	$14.30 per hour
Public Holiday Penalty Rate	250% = $35.70 per hour	$14.30 per hour
Overtime	150% for first two hours = $21.42 per hour 200% for all other hours = $28.56 per hour	No overtime
Rest Breaks	Paid 10 minute break	No paid rest break
Ordinary Hours	7am – 6pm Mon-Wed 7am – 9pm Thurs-Fri 7am – 6pm Saturday 8am – 5pm Sunday	All hours worked are ordinary hours
Annual leave loading	17.5%	No leave loading
Roster Protections	Guaranteed RDOs No more than 5 days work per week (or 6 in one week and 4 the next) At least 10 hours break between shifts	No RDOs No restriction on the amount of consecutive days worked without a break No minimum break between shifts
First Aid Allowance	$1.54 per day	No allowance
Meal Allowance	$10.80 per meal	No allowance
Uniform Allowance	$8.80 per week	No allowance
Part Time Employees	Maximum 30 hours per week	Can be required to work over 38 hours per week

5.4.3 It is apparent from the terms of the AWA that all penalties, loadings and allowances have been "traded" for an additional 2 cents per hour. As was put by the Hon Kim Beazley MP, Leader of the Opposition, in Federal Parliament on Wednesday, 24 May 2006:

> *"This is a government that thinks the entitlements of our young workers are worth 2c. It is a government that wants you to trade away your holidays, rest breaks and penalty rates for 2c. This is a government that wants companies slashing hard won rights and conditions and tossing workers 2c in return. What an absolute disgrace. Our young workers deserve better than 2c and they deserve better than this government's extreme industrial relations laws."*[49]

5.4.4 A full-time adult Spotlight employee stands to lose up to **$91.35** per 38 hour week under this second-rate AWA:

Table 9

Hours	NSW Award	Spotlight AWA	Loss
Thursday Penalty Rate (6pm-9pm @ 125%)	(14.28 x 125%) x 3 hrs (6pm-9pm) = $53.55	$14.30 x 38hrs = $543.40	
Saturday Penalty Rate (125%)	($14.28 x 125%) x 7.6hrs = $135.66		
Sunday Penalty Rate (150%)	($14.28 x 150%) x 7.6hrs = $162.73		
Other Hours	$14.28 x 19.8hrs = $282.74		
Total	$634.75	$543.40	**- $91.35**

5.4.5 Ms Harris summed up her disillusion with this comment reported in the Sydney Morning Herald:

> *"I thought it was an insult; absolutely disgusting. I voted Liberal all my life, but there's no way I'd sign up to this."*[50]

5.4.6 The SDA submits that as Australian Workplace Agreements of this character become more prevalent, many workers in NSW regional areas will be simply forced to accept these substandard offers. Workers in regional areas simply do not have the same scope and range of job opportunities as those in metropolitan Sydney.

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[49] Australian Parliament House of Representatives Hansard, Wednesday 24 May 2006 (proof copy), p 55.
[50] *"Shop tried to pull wool over my eyes"*, Sydney Morning Herald, Thursday 25 May 2006, p 5.

5.4.7 Packing up the family, selling the home and settling in another town to find a good job which pays decent wages and conditions is also prohibitively expensive.

5.4.8 It is not realistic to expect that minimum Award wage earners with few savings will be able to afford to do this. In the SDA's experience these workers are more likely to accept the "take it or leave it" offer.

5.5 CASUALS

5.5.1 Casual workers will be disadvantaged in three significant ways under the WorkChoices legislation:

Reduction in Casual Loading

5.5.2 The Australian Pay and Classification Scale will replace award minimum wages. It guarantees a default casual loading percentage of **20%**.[51]

5.5.3 The current minimum casual loading payable under the NSW Shop Employees' (State) Award is **24.6%** comprising of a 15% basic loading and 1/12 annual leave loading (cumulative). The current minimum hourly rate of pay for an adult casual shop assistant in NSW is **$17.80 per hour**.

5.5.4 Any workplace agreement made under WorkChoices must comply with the Australian Fair Pay and Conditions Standard, which incorporates the Australian Pay and Classification Scale. This simply means that workplace agreements which contain a rate of **$17.14 per hour** are lawful under the legislation. This is **$0.66 per hour** less than the current Award.

5.5.5 The SDA submits that with the removal of rostering conditions and all other leave entitlements except for annual leave, personal / carer's leave and unpaid parental leave it will become even more attractive for employers to cease offering casual contracts and solely offer permanent part-time contracts on AWAs containing nothing more than the Australian Fair Pay and Conditions Standard. The economics are as follows:

Annual leave	4 weeks p.a.	4/48	+ 8.33%
Personal / carer's leave	10 days p.a.	2/48	+ 4.16%
Parental leave	1 year	unpaid	+ 0.0%
			+ 12.5%

5.5.6 The SDA suggests that this new form of part-time employment created under the auspices of the WorkChoices legislation is just another form of more poorly paid casual employment.

Secure Employment Test Case

[51] Section 186(1) of the *Workplace Relations Act* 1996

5.5.7 Recent improvements in access to job security provided by the NSW Secure Employment Test Case decision[52] are now essentially redundant for those NSW workers under the WorkChoices legislation. Except for those covered by Notional Agreements Preserving State Awards for no more than the next three years and those who have sufficient bargaining power to negotiate and incorporate such conditions into workplace agreements, employees shall remain casual at the whim of their employer.

5.5.8 Section 515 of the *Workplace Relations Act* 1996 provides:

> ***515 Matters that are not allowable award matters***
>
> *(1) For the purposes of subsection 513(1), matters that are not allowable award matters within the meaning of that subsection include, but are not limited to, the following:*
>
> *...*
>
> *(b) conversion from casual employment to another type of employment;*
>
> *..."*

5.5.9 NSW workers covered by federal awards which contain casual conversion principles similar to that determined in the Secure Employment Test Case will no longer have the benefit of those provisions.

5.5.10 Despite mounting evidence against the long term use of casual labour, including training, career development and OH&S issues and the disadvantage suffered by casuals seeking finances, the Federal Government has seen fit to "disallow" these provisions which assist casuals securing permanent part-time or full-time work.

5.5.11 The SDA submits that WorkChoices is likely to entrench the growing practice of some employers to engage a substantially causal workforce, thus maintaining maximum flexibility in hours and the capacity to terminate employment with impunity during the casual employee's first 12 months of employment.

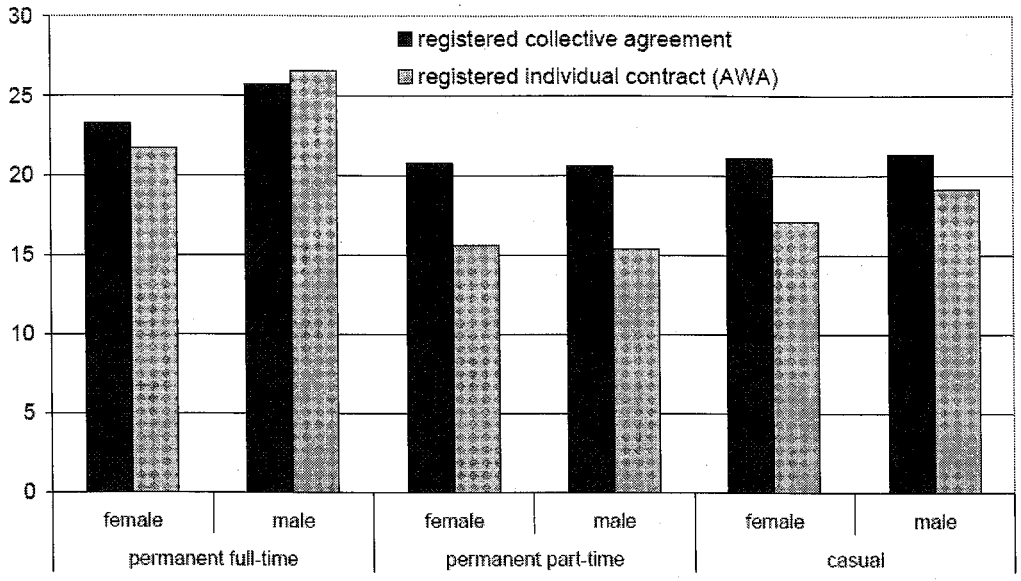
Wage Outcomes for Casuals on AWAs

5.5.12 The principle of encouraging the spread of AWAs, encompassed in the WorkChoices legislation, is further bad news for casual employees who have earned considerably less than their collective agreement counterparts during the operation of the pre-reform *Workplace Relations Act* 1996.

5.5.13 The table below (reproduced from paragraph 5.2.2) confirms that both male and female non-managerial casuals on registered AWAs earn less in average hourly earnings than those employed under registered collective agreements.

[52] [2006] NSWIRComm 38

Average hourly earnings, non-managerial employees by method of setting pay, May 2004



5.5.14 WorkChoices not only reduces the minimum standard by which workplace agreements and AWAs are measured but also encourages the introduction of AWAs during the life any workplace agreement. The combined effect will be to encourage more AWAs which pay less than current Award standards. Casual employees are, therefore, likely to be further disadvantaged in the future.

6 FORECASTING THE IMPACT OF WORKCHOICES

6.0.1 It is too early to forecast with absolute precision the full extent to which WorkChoices will be detrimental to NSW workers and their families, although the SDA submits that the foregoing analysis should leave the Committee in no doubt that young people, women, workers with family responsibilities, regional workers and casuals will be significantly worse off under these laws.

6.0.2 Another useful yardstick is, however, to observe the impact of similar legislation in other jurisdictions and to note the academic and business commentary on the changes.

6.1 THE VICTORIAN EXPERIENCE UNDER KENNETT

6.1.1 In 1992 the Victorian Kennett Government enacted the *Employee Relations Act* 1992. This legislation imposed extensive changes to the State's industrial laws.

6.1.2 On 1 March 1993 all Victorian State Awards ceased to have effect.

6.1.3 State Awards were replaced with a set of minimum terms and conditions of employment, contained in Schedule 1 of the *Employee Relations Act* 1992. The minimum terms and conditions of employment for permanent employees were:

- Four weeks' paid annual leave for each year worked;
- One week's sick leave for every year of service;
- Minimum wage rates as determined by the Employee Relations Commission of Victoria;
- Maternity, paternity and adoption leave entitlements; and
- Entitlement to a notice period for lawful termination of employment, or compensation instead of notice.

6.1.4 These Schedule 1 minimum terms and conditions of employment became known as Kennett contracts. These bare minimum contracts stripped away basic award conditions such as penalty rates, loadings, allowances, rest pauses, meal breaks, rostering conditions and public holiday entitlements to name but a few. Kennett contracts aggressively deregulated the minimum wages and conditions applicable to Victorian workers.

6.1.5 These contracts were extensively used in the retail industry in Victoria. The combined effect of setting aside Awards and implementing a new and significantly lower safety net resulted in many retailers offering no more than the bare minimum.

6.1.6 On 1 January 1997, the Kennett Government referred the State of Victoria's industrial relations powers to the Federal Government. The minimum conditions of employment provided in Schedule 1 of the *Employee Relations Act* 1992 (Vic) were incorporated into Schedule 1A of the *Workplace Relations Act* 1996 (Cth) and continued to remain in force.

6.1.7 The minimum terms and conditions of employment prescribed by Schedule 1A were:

> *(a) pro-rata and cumulative annual leave equivalent to four weeks ordinary hours work per year;*
> *(b) pro-rata and cumulative sick leave equivalent to one week's ordinary hours work;*
> *(c) maternity, paternity or adoption leave and an alternative to work part-time in connection with the birth or adoption of a child;*
> *(d) an entitlement to be given notice of termination or compensation in lieu thereof; and "*
> *(e) a minimum wage for a work classification as determined by the Commission pursuant to s.501 of the Act.*

6.1.8 Section 500 of the pre-reform *Workplace Relations Act* 1996, provided the following:

> *(1) Subject to sections 507 and 508, minimum terms and conditions of employment for employees in Victoria are contained in Schedule 1A*
>
> *(2) Subsection (1) is intended to supplement, and not to override, entitlements under:*
>
> *(a) Part VIA of this Act; or*
> *(b) any Commonwealth legislation other than this Act; or*
> *(c) any legislation of Victoria or of any other State or Territory.*

6.1.9 The pre-reform *Workplace Relations Act* 1996 also provided that employers must not enter into a contract of employment that provided a less favourable term or condition to an employee than the minimum under Section 500(1) and that the minimum terms and conditions under Section 500(1) were deemed to be terms and conditions of every employment agreement (see Sections 505 and 506 respectively). An employee's right to the minimum entitlements was subject to the following qualifications:

- The entitlements did not apply during any period in which the employee was subject to a certified agreement or an AWA;[53] and
- To the extent of any inconsistency with Schedule 1A, an award of the Commission prevailed.[54]

6.1.10 The experience of low paid Victorian workers under these forbidding laws was described by Professor David Peetz as follows:

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[53] Section 507 of the *Workplace Relations Act* 1996 (Cth) (pre-reform)
[54] Section 508 of the *Workplace Relations Act* 1996 (Cth) (pre-reform)

"In Victoria individual contracts were available under the state jurisdiction from late 1992, and later under the 'Schedule 1A' provisions in the federal Act to which the state jurisdiction was transferred. A survey of 835 Victorian workplaces in June 2000 indicated that employees under this jurisdiction had double the probability had by employees under the federal jurisdiction of being low paid. Only 41 per cent of Schedule 1A workplaces paid a higher rate of pay for overtime than ordinary-time hours, less than a quarter paid penalty rates for working on weekends; yet Schedule 1A workers without these entitlements, rather than being compensated through higher wages, were more likely to be in low wage workplaces (Watson 2001:143-4)."[55]

6.1.11 The research confirms that a significant number of Victorian low paid workers lost weekend penalty and overtime rates without any compensatory increase in their base rate of pay.

6.1.12 The SDA submits that the WorkChoices amendments closely mirror the changes imposed by the Kennett Government in Victoria in 1992 / 93. Although awards continue to operate under WorkChoices, the right of new employees to insist upon award terms and conditions of employment upon commencement of employment is essentially beyond reach if their employer chooses to make it so. As discussed above, the employer may insist upon an AWA, containing no more than the five minima provided by the Australian Fair Pay and Conditions Standard.

6.1.13 Additionally, as detailed in paragraphs 4.3.10 to 4.3.11, for those employees who enter the workplace agreement stream, the right to reinstate award conditions upon the termination of their workplace agreement is severely circumscribed.[56]

6.1.14 Further evidence of the lost earnings and significant disadvantage suffered by Victorian retail workers engaged on Kennett contracts compared to the appropriate federal award emerged during a case brought by the SDA in 1998 and determined by a Full Bench of the AIRC (Justice Guidice, President, SDP Watson and Commissioner Raffaelli) in Melbourne on 17 January 2003 in 2003, *Shop, Distributive and Allied Employees' Association v $2 and Under and Others* [PR926620].

6.1.15 In 1998 the SDA served a letter of demand and log of claims on some 35,877 employers in the retail industry in Victoria. The employers did not accept the demands and the SDA commenced Section 99 dispute proceedings before the AIRC in accordance with *Workplace Relations Act* 1996. In AIRC Full Bench proceedings heard over 2001 and 2002 the SDA sought an award roping in some 17,628 employers into the *Shop, Distributive and Allied Employees Association – Victorian Shops Interim Award 2000.*

6.1.16 The core purpose of the successful SDA application was to restore fair safety net award conditions of employment for many thousands of Victorian retail workers; these conditions included *"provision for overtime, penalty rates, annual*

[55] Peetz, D (2001) *"Individual Contracts, Collective Bargaining, Wages and Power"*, Centre for Economic Policy Research ANU Discussion Papers, Discussion Paper No. 437, September 2001, p 5.
[56] Section 399 of the *Workplace Relations Act* 1996

leave loading, shift loadings and severance entitlements"[57] which otherwise did not apply to Kennett contract employees.

6.1.17 The submissions of various employer associations, and the Commonwealth intervening, asserted that significantly increased labour costs would be associated with granting the SDA application. This demonstrates how appallingly disadvantaged Schedule 1A retail workers had become in comparison to their counterparts employed on Award wages and conditions. Employers during proceedings suggested labour costs would increase anywhere within a range of 20% to 40%. The Commonwealth, during its closing submissions, also referred to SDA exhibit material which compared Schedule 1A wages against Award wages for a 24 hour / 7 day per week operation:

> *"Mr Cole: This is the business that is open 24 hours a day, seven days a week. And the Commission will see that the SDA sets out the bottom line comparison for that scenario under the Victorian Shops Award. The cost is 176,598 and under schedule 1A 112,694 and the extra cost is set out there and there is even a reference to the - how the Commonwealth estimate has strayed. But what is not set out there is the order of the cost increase in percentage terms. 57 per cent in that scenario."*[58]

6.1.18 The experience of many Victorian Schedule 1A retail workers was that no overtime rates, no penalty rates and minimum hourly rates of pay applied. Higher wages, better jobs and a more decent society did not emerge.

6.1.19 For those who became entitled to the terms and conditions of the *Shop, Distributive and Allied Employees Association – Victorian Shops Interim Award 2000* in 2003, wage increases in the range of 20% to 57% (depending upon the particular circumstances of both the employee and the employer) were achieved when the entitlement to award conditions was restored.

6.1.20 The conclusion is very simple. The corollary is that, if employees were 20% to 57% better off when award conditions were restored, those same employees were 17% to 36% worse off prior to the successful proceedings. The *Employee Relations Act* 1992, and subsequently the *Workplace Relations Act* 1996, left Victorian Schedule 1A retail employees 17% to 36% worse off compared to the applicable Award determined by the AIRC.

6.2 EXPERIENCE UNDER THE EMPLOYMENT CONTRACTS ACT 1991 (NZ)

6.2.1 In 1991 the New Zealand Parliament enacted the *Employment Contracts Act* 1991 (NZ). Similar to the WorkChoices amendments, these laws made radical changes to the working conditions of New Zealand workers.

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[57] *Shop, Distributive and Allied Employees' Association v $2 and Under and Others*, Full Bench (Justice Guidice, President, SDP Watson and Commissioner Raffaelli), Melbourne, 17 January 2003, [PR926620], paragraph 57.

[58] *Shop, Distributive and Allied Employees' Association v $2 and Under and Others*, Full Bench (Justice Guidice, President, SDP Watson and Commissioner Raffaelli) Melbourne AIRC, Transcript 25/10/2002, paragraph 5255.

6.2.2 The occupational and industry award system was abolished by the legislation and individual employment contracts were given priority.

6.2.3 Extensive academic studies have been conducted regarding the impact of these laws and over time evidence emerged irrefutably demonstrating the significant losses suffered by workers due to the operation of the *Employment Contracts Act* 1991

6.2.4 Between 1991 and 1999 the minimum wage under the *Employment Contracts Act* 1991 increased by 14% while inflation rose by 18%

6.2.5 One study of supermarket pay rates showed that while real wage rates in that sector fell for those working Monday to Friday by 11% between 1987 and 1997, for those whose work included weekends there was a 33% real pay cut.[59]

6.2.6 A letter from a supermarket checkout supervisor to the Department of Labour summed up the impact of the *Employment Contracts Act* 1991 on workplaces:

> *"As soon as the Employment Contracts Act came in everything changed in this place and we were told – now he'd do it his way. First he got rid of the union, and some were threatened that if they belonged to the union they would be down the road. The contracts were never negotiated. We were called in one by one and given this printed document with a place to put your signature. Some of the young ones were not allowed to take their contracts home for their parents to read. The first year all of us who already worked there got penalty rates. As people left or were sacked, the new ones went on to a flat rate with no set amount – they were all getting different wages. Within a year there was a 90% rollover of staff."*[60]

6.3 MORE JOBS AND A STRONGER ECONOMY?

6.3.1 The assertion that WorkChoices will produce more jobs and increase productivity is not supported by any reliable evidence. As discussed at paragraph 5.1.4, 151 Australian Industrial Relations, Labour Market and Legal Academics disagree.

6.3.2 The SDA suggests that the establishment of the AFPC and its function in determining minimum wage increases was intended to reduce the increases in minimum wages delivered compared to National Wage Case decisions over the last decade. Its creation is clearly intended to ensure future increases are more in line with previous Federal Government submissions to the AIRC in these cases; the rationale being that lower increases will improve the affordability of labour and encourage higher employment. However, the academics said:

> *"... the link between real wage cuts and employment is contested; if there is a link, a very substantial real wage cut may be required to produce any gains in unemployment, with serious implications for the relative value of unemployment benefits".*[61]

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[59] "Learning from New Zealand", Centre for Full Employment and Equity website (Lyndy McIntyre)
[60] Ibid
[61] Submission to the Inquiry into the Workplace Relations Amendment (Work Choices) Bill 2005 by a group of 151 Australian Industrial Relations, Labour Market and Legal Academics, November 2005, p 27

6.3.3 Whilst business is generally supportive of WorkChoices, that support is not universal and in some quarters a more honest assessment of the relative merits of the legislation is privately offered.

6.3.4 Unlike the Federal Government most businesses are not so dishonest as to claim that this legislation protects employees or provides a "fairer" system,. As recently reported in *Business Review Weekly*:

> *"There is not one employer in Australia who believes that WorkChoices is anything other than a way to give more power to employers over employees. And part of that power is the ability to change or restructure wages if they are in a position to do so. The real sin of the Cowra Abattoir was not in sacking employees and then offering some of them their jobs back at a lower rate, it was that they were not sufficiently subtle about it."*[62]

6.3.5 Even if WorkChoices is ultimately good for the economy and increases employment, a prediction that is seriously contested by labour market academics, it will undoubtedly be at the expense of the wages and conditions of many NSW workers and the living standards of NSW families.

[62] "WorkChoices Worries", Business Review Weekly, April 6-12, 2006, p 17

7 RECOMMENDATIONS

7.0.1 It is those employees who are vulnerable in the labour market – youth, women, workers with family responsibilities, regional workers and casuals – who are most at risk under these revolutionary and radical laws.

7.0.2 Given that the Australian economy has enjoyed unprecedented growth, increased productivity and improved international competitiveness over the last decade operating within the confines of industrial laws previously guaranteeing fairness, a strong independent umpire and fair and reasonable wages and conditions of employment, it must be presumed that these laws are more about ideology than productivity and competitiveness. The SDA calls on the Committee to reject this backward ideology.

7.0.3 The SDA respectfully requests that the Committee carefully consider and make suitable recommendations which will genuinely protect the interests of vulnerable workers in our community. Higher wages, better jobs and a decent society depend upon it.

7.0.4 The SDA recommends the making of any NSW laws which lawfully and effectively protect the livelihood of welfare of NSW workers and their families.

7.1 PRESERVING A FAIR GO FOR YOUNG AUSTRALIANS

7.1.1 One area where the New South Wales Parliament can make laws to protect a vulnerable group in the labour market is the area of Child Labour law.

7.1.2 The SDA, therefore, recommends the adoption of comprehensive New South Wales Child Labour laws protecting young people from economic exploitation ("Child Labour Legislation").

7.1.3 Such legislation should:

- proscribe the employment of children under the age of 18 years in NSW unless the child employee's employment conditions meet the required "fair and reasonable" standard;

- establish a system of issuing certificates approving the employment of children under 18 years by an employer conditional upon the employer's employment conditions meeting a "fair and reasonable standard";

- establish a process setting fair and reasonable standards of conditions of employment for children based upon existing NSW Awards (made under Section 10 of the NSW *Industrial Relations Act* 1996 which sets *"fair and reasonable conditions of employment for employees"*); and

- include fair and reasonable standard conditions and if an employer and employee wish to depart form the standard must demonstrate that the child employee will suffer no net detriment in their aggregate package of conditions of employment compared to the standard.

7.2 ONGOING MONITORING AND FUTURE INQUIRY

7.2.1 The SDA recommends the establishment of an appropriate NSW Government body and / or mechanism to monitor and report to the Minister for Industrial Relations on the impact of the Commonwealth WorkChoices legislation on NSW workers and their families on a regular and ongoing basis.

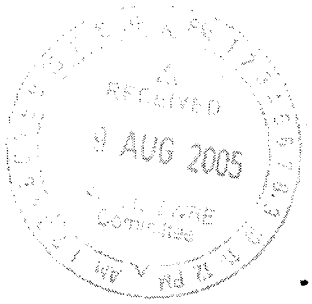
7.2.2 The SDA recommends that a further parliamentary inquiry, with the same or similar terms of reference, be scheduled in no more than 12 months to investigate and report on the impact of the Commonwealth WorkChoices legislation.

7.2.3 The SDA recommends the making of any and all such other NSW laws which lawfully and effectively protect the livelihood of welfare of NSW workers and their families.

Prepared by:
David Bliss
Senior Industrial Officer
26 May 2006

Annexure “C”

5 August 2005



Committee Secretary
Senate Employment, Workplace Relations and Education Committee
Department of the Senate
Parliament House
Canberra ACT 2600

BY EMAIL: eet.sen@aph.gov.au

Dear Sir / Madam,

SUBMISSION
INQUIRY INTO WORKPLACE AGREEMENTS

I write to the Committee as a 23 year old fast food worker.

Since the age of 19, I have worked for Burger King, Krispy Kreme and Hungry Jacks. In that time I have been employed on a state award, union negotiated collective agreements and an individual Australian Workplace Agreement. As a young worker I have been employed at various times casually, part-time and full-time and I have worked as an ordinary team member, as a supervisor and in quasi management roles.

The 12 months I spent working for Krispy Kreme on an Australian Workplace Agreement was the most objectionable of these experiences.

It was objectionable for a number of reasons, not the least of which was that I did not wish to be employed on an Australian Workplace Agreement but was compelled to sign the Agreement. I was compelled on the basis that I could not guaranteed hours as a casual employee if I did not sign the Agreement and management told me that it would be in my best interests to sign the Agreement if I wished to pursue future management aspirations with the Company.

In May 2003, I was initially employed by Krispy Kreme as a casual employee. I was employed as a shop assistant and my wages and conditions were covered by the Shop Employees' (State) Award.

In July 2003, the Company convened a meeting during which it offered Australian Workplace Agreements to all employees working at Krispy Kreme Penrith. The meeting was conducted by Janette Godby, the Company Human Resources Manager, and Nedj Semic, the Penrith site Manager. They made us feel that the Agreements would be in

everyone's best interests. After reading the proposed Agreement and discussing it with my family and workmates, I believed that I would be worse off signing the Agreement.

Following the meeting I discussed the Agreement with two store managers. I said that I preferred to remain employed on the Award. I was told that if I didn't sign the Agreement I had no chance of being promoted to a manager, which I had previously expressed an interest in, and that there would be no guarantee of hours in the future. I was also promised that if I signed the Agreement I would be offered full-time hours. At first only part-time hours were offered, which I refused to sign.

I had previously been a member of the union, the SDA, at Burger King so I sought its advice on the proposed Agreement. In the following days, the union reviewed the Australian Workplace Agreements and strongly recommended employees to reject the proposal.

The union held meetings at Penrith and distributed leaflets explaining that the Agreements would cut weekend and evening penalty rates, rostering conditions, loadings, allowances and other award entitlements. The union suggested that the proposed wage increases were insufficient to compensate employees for these lost entitlements and argued that employees would be better off on the Award. The union distributed a "Union News" which explained in detail the key issues. I have attached a copy of the leaflet for the Committee's reference.

A small number of other employees and I agreed with the union's assessment and requested the union to represent us in discussions with the Company. After meeting the Company, the union reported back that the Company was not prepared to make any substantial changes to the Agreement and that we had a number of options:

(a) Refuse to sign and remain on the Award;
(b) Sign the Agreement; or
(c) Seek the support of more employees to bargain for a better Agreement.

Most of the employees were 15 to 18 years old and did not fully understand their rights and what was at stake. Most signed the Agreement. Even after the union volunteered to assist anyone who sought its representation most were too apprehensive to get involved even though they were by now aware that they would be paid less on weekends when most of them wanted to work.

I remained employed on the Shop Employees' (State) Award at this time. I was working full-time hours plus overtime. The deadline for signing the Agreements arrived and I did not want to sign the Agreement. I sat in the Manager's office in tears whilst I was told that I had to sign the Agreement or I wouldn't get any hours and I wouldn't be promoted.

I felt that I was left with no choice and signed the Agreement.

Having signed the Agreement, I was paid less for working the same hours each week than I would have been paid on the Award. For example, please see below two wages comparisons demonstrating a best case and worst case scenario for working 5am to 2pm Wednesday – Sunday. These were my hours of work at Krispy Kreme Liverpool in early 2004:

BEST CASE SCENARIO

Kripsy Kreme AWA Wages

Day	Start	Finish	Lunch	Ordinary	Rate	Sat Penalty	Rate	Sun Penalty	Rate	OT1.5	Rate	OT2	Rate	Total
Monday														
Tuesday														
Wednesday	5:00:00 AM	2:00:00 PM	0.50	8.50	$15.500									$131.750
Thursday	5:00:00 AM	2:00:00 PM	0.50	8.50	$15.500									$131.750
Friday	5:00:00 AM	2:00:00 PM	0.50	8.50	$15.500									$131.750
Saturday	5:00:00 AM	2:00:00 PM	0.50	8.50	$15.500									$131.750
Sunday	5:00:00 AM	2:00:00 PM	0.50	8.50	$15.500									$131.750

$658.750

Shop Employees (State) Award Wages

Day	Start	Finish	Lunch	Total Hours	Ordinary	Rate	Sat Penalty	Rate	Sun Penalty	Rate	OT1.5	Rate	OT2	Rate	Total
Monday															
Tuesday															
Wednesday	5:00:00 AM	2:00:00 PM	0.50	8.50	7.6	$13.845					0.90	$20.767			$123.910
Thursday	5:00:00 AM	2:00:00 PM	0.50	8.50	7.6	$13.845					0.90	$20.767			$123.910
Friday	5:00:00 AM	2:00:00 PM	0.50	8.50	7.6	$13.845					0.90	$20.767			$123.910
Saturday	5:00:00 AM	2:00:00 PM	0.50	8.50			7.6	$17.306			0.90	$20.767			$150.215
Sunday	5:00:00 AM	2:00:00 PM	0.50	8.50					7.6	$20.767			0.90	$27.689	$182.751
Laundry															$5.000
A/L Loading					38	$13.845									$7.672

$717.369

$58.619

WORST CASE SCENARIO

Kripsy Kreme AWA Wages

Day	Start	Finish	Lunch	Ordinary	Rate	Sat Penalty	Rate	Sun Penalty	Rate	OT1.5	Rate	OT2	Rate	Total
Monday														
Tuesday														
Wednesday	5:00:00 AM	2:00:00 PM	0.50	8.50	$15.500									$131.750
Thursday	5:00:00 AM	2:00:00 PM	0.50	8.50	$15.500									$131.750
Friday	5:00:00 AM	2:00:00 PM	0.50	8.50	$15.500									$131.750
Saturday	5:00:00 AM	2:00:00 PM	0.50	8.50	$15.500									$131.750
Sunday	5:00:00 AM	2:00:00 PM	0.50	8.50	$15.500									$131.750

$658.750

Shop Employees (State) Award Wages

Day	Start	Finish	Lunch	Total Hours	Ordinary	Rate	Sat Penalty	Rate	Sun Penalty	Rate	OT1.5	Rate	OT2	Rate	Total
Monday															
Tuesday															
Wednesday	4:30:00 AM	2:30:00 PM		10.00	7.6	$13.845					2.00	$20.767	0.4	$27.689	$157.830
Thursday	4:30:00 AM	2:30:00 PM		10.00	7.6	$13.845					2.00	$20.767	0.4	$27.689	$157.830
Friday	4:30:00 AM	2:30:00 PM		10.00	7.6	$13.845					2.00	$20.767	0.4	$27.689	$157.830
Saturday	4:30:00 AM	2:30:00 PM		10.00			7.6	$17.306			2.00	$20.767	0.4	$27.689	$184.135
Sunday	4:30:00 AM	2:30:00 PM		10.00					7.6	$20.767			2.40	$27.689	$224.285
Laundry															$8.300
Travel	5 days	additional	17km	each way	170	$0.470									$79.900
A/L Loading				17.5% of 1/12	38	$13.845									$7.672

$977.782

$319.032

The best case scenario assumes that I received unpaid 30 minute meal breaks and was not entitled to travel allowances and time for travelling to and from Liverpool each day rather than Penrith, my original store. **I was $58.62 per week or $2,813.76 per year (48 weeks) worse off on the Australian Workplace Agreement compared to the Award.**

The worst case scenario assumes that I worked through my unpaid lunch break each day, which was more common than not, and that I was arguably entitled to the payment for travel time and allowance for relocating to Liverpool to enhance my career / promotion prospects. **I was $319.03 per week or $15,313.44 per year (48 weeks) worse off on the Australian Workplace Agreement compared to the Award.**

On the Australian Workplace Agreement I also worked the following "legal" arrangements:

- 10 consecutive days without the payment of overtime;
- more than 12 hours on a shift on average once per month without the payment of overtime; and
- split shifts without the payment of overtime (e.g. 5am – 3pm and 10pm – 3pm within the same 24 hour period).

On the Australian Workplace Agreement I was also reclassified from a full rate of pay on the Award (there are no training rates) to a training rate of pay.

The Agreement classification structure paid a rate of pay determined by your level of competency as follows:

	Regular Hours
Trainee	15.00
Retail Level 1	15.25
Retail Level 2	15.50
Retail Level 3	15.75
Retail Level 4	16.00
Supervisor	16.50

The Company also posted a letter in the crew room prior to signing the Agreements making the following "commitment":

"With respect to progression, it is our expectation that all full time and part time employees who complete training will move from the trainee classification to grade 4 in a short period of time. It is our expectation that once you have completed the probationary period you will have the opportunity to complete a competency each subsequent month. For most full time and part time employees this means that they will have the potential to be a grade 4 and paid as a grade 4 within 5-7 months of the commencement of their employment."

At the time that I ceased employment with Krispy Kreme (approximately 1 year's service) I performed the following duties and had completed the following training modules:

- rostering / planning staffing needs on a weekly basis;
- supervising employees;
- cashing / banking;
- conducting interviews / hiring for recruits for the opening of the Liverpool site;
- conducting store orientations for new employees **including requiring all new employees to sign their Australian Workplace Agreement as a condition of employment**;
- training new staff in all areas (except production);
- wore a Manager's uniform to work each day;
- completed and competent in all training modules including – Krispy Kreme Culture and Values, Health and Safety & Hygiene, Sanitation standards, Production, Processing, Customer Service, Drive Thru Service, Barista and Cashier; and
- completed most Team Leader modules.

Having transferred to the new Liverpool store to secure a promotion, I was given the promotion, wore the Manager's uniform and performed most of the Manager's duties **but was still only paid a Level 2 rate of pay of $15.50 per hour**.

The Company simply did not sign off on my competencies. This ensured that my rate of pay did not reflect the duties I was expected and required to perform. Meanwhile day after day I was deemed competent enough to train and supervise employees performing these same duties.

The Company's written commitment, reproduced above, provided in July / August 2003 to induce employees to sign the Agreements was meaningless and the Company failed to adhere to progression through the grades as demonstrated by my experience. I was essentially trapped on a training rate of pay throughout my employment with no remedy available under the Agreement to force the Company to pay a fair rate of pay reflecting the work I performed.

The Company's commitment in the Australian Workplace Agreement that it "may" introduce a bonus plan / arrangement during the life of the Agreement "at its sole discretion" never eventuated during my service.

I resigned from Krispy Kreme in July 2004, after an altercation with a Manager on 10 June 2004, who verbally abused me in the Manager's office at work because of a personal dislike toward me.

During the 12 months that I worked for Krispy Kreme, I was denied a free choice of my wages and conditions of employment (my award), I suffered a pay cut compared to the wage otherwise payable for the same work performed under that award, I worked long hours without the payment of any overtime, I was paid no penalties for working on weekends and after midnight, I was even denied wage increases reflecting the actual work I performed under the Company's very own competency based classification structure but, worst of all, I was told along with over 100 other young employees in July 2003 that these individual agreements were in our best interests.

The Government should be censured for introducing these Agreements into our workplaces. I encourage the Committee to reject any further changes to legislation which would have the effect of extending the use of these Agreements. I ask that every member of the Committee demonstrate the fortitude and prudence to restore dignity and fairness to all workplaces by recommending that Australian Workplace Agreements be revoked entirely.

I look forward to reading the Committee's recommendations.

Yours faithfully,

Thea Birch Fitch

sda our union

Union News

58 / 03

Shop, Distributive & Allied Employees' Association N.S.W. Branch
LEVEL 4, 8 QUAY STREET, SYDNEY NSW 2000. P.O. BOX K230, HAYMARKET POST OFFICE NSW 1240 TELEPHONE: (02) 9281 7022 FACSIMILE: (02) 9281 7050
E-mail: secretary@sdansw.asn.au Web site: www.sdansw.asn.au
BRANCH PRESIDENT BRANCH SECRETARY-TREASURER
GABY CUTCHER GREG DONNELLY

28 July, 2003

KRISPY KREME AWA
THERE'S A HOLE IN MY WAGE PACKET!

The SDA represents employees working in the retail industry. This includes Krispy Kreme employees working in retail outlets.

The SDA has been requested to review the proposed Australian Workplace Agreements (AWAs) now circulating at the Penrith store. Many of your colleagues have now requested the Union's advice and representation in relation to the proposed AWAs.

MODEST WAGE INCREASE IN RETURN FOR CUTS TO KEY CONDITIONS

Upon reviewing the proposed AWAs, the SDA has advised employees that in return for modest wage increases there are substantial cuts in key conditions of employment including penalty rates, weekend loadings, rostering provisions and your right to access to an independent umpire if there are problems at work.

Indeed, many employees working nights and weekends will see the proposed wage increase swallowed up by the loss of penalties and loadings.

YOUR RIGHTS AND ENTITLEMENTS

The following matters are very important to consider:

- The proposed Agreements are individual workplace agreements that will cover your terms and conditions of work at Krispy Kreme for at least the next two (2) years;
- The AWAs will fully replace your current conditions under the Shop Employees' (State) Award;

- For all existing employees, who were engaged and commenced work before the AWAs were offered, you are entitled to negotiate the proposed individual deal and, if unsatisfied, to remain on your current wages and conditions under the Shop Employees' (State) Award;
- You are entitled to appoint an organisation or person to act on your behalf to negotiate the proposed Agreement; and
- The SDA is able to provide the expertise, experience and support necessary to negotiate your wages and conditions at work.

THERE'S A HOLE IN THE WEEKEND AND LATE NIGHT RATES OF PAY

The Union acknowledges that there are some benefits offered by the proposed Agreement, but on balance the proposal will, without doubt, disadvantage the vast majority of Krispy Kreme employees working at times where penalties and loadings currently apply. Consider the following wages comparison:

	KRISPY KREME AWA ALL HOURS TRAINEE RATES	SHOP EMPLOYEES' (STATE) AWARD*
19 year old Part-time Saturday rate	$12.40 per hour	$13.335 per hour
Adult (21 year old +) Full-time After Midnight (Overtime)	$15.50 per hour	$20.005 per hour (2 hours) $26.675 per hour (thereafter)
18 year old Part-time Sunday rate	$10.85 per hour	$14.005 per hour
16 year old Part-time Monday – Friday rate	$7.75 per hour	$6.67 per hour
Adult (21 year old +) Part-time Public Holiday rate	$15.50 per hour + fixed $75 or $150 depending on shift length	$33.34 per hour

* Note: These rates apply from the first full pay period to commence on or after 28 July, 2003, when a $17 wage increase to all adult shop assistants became payable without any offset to conditions of employment.

The rates of pay should also be considered in light of Kripsy Kreme's right to direct you to work for up to an additional 15 minutes each shift without any pay at all. This is simply an unacceptable provision in any modern, enlightened workplace.

WHAT ELSE IS MISSING IN THE MIDDLE?

The SDA has reviewed the proposed AWAs and has identified some serious deficiencies that all Krispy Kreme employees should carefully consider before signing the document. The SDA considers that these deficiencies add up to an unsatisfactory proposal. Consider the following ten (10) key conditions:

	KRISPY KREME AWA	SHOP EMPLOYEES' (STATE) AWARD
Weekend Penalties	None	Saturday 25% Sunday 50%
Public Holidays	Flat rate + fixed $75 / $125 loading	250% rate
Overtime	Applies after 152 hours per 4 weeks 150% for first 40 hours OT 200% thereafter (i.e. 192 hours)	Applies after 38 hours per week / 152 hours per 4 weeks In excess of 5 (6) shifts per week Beyond 9 (11) hours per shift Before / After rostered shift Outside ordinary hours 150% for first 2 hours (per shift) 200% thereafter (per shift)
Part-time	By agreement up to 38 hours Capacity for unilateral reduction / increase	Minimum 9 hours and Maximum 30 hours per week
Maximum shift	10 hours 12 hours by agreement 14 hours for split shifts	9 hours 11 hours (once per week or more be agreement)
Consecutive Shifts	Maximum of 10	Maximum of 5 (6)
Laundry allowance	None	$8.30 per week or $5.00 per week
Union Picnic Day	No	Yes
Annual Leave Loading	None	17.5%
Grievance Procedure	Access to mediation Right to refuse representative No independent arbitration	Access to NSW Industrial Relations Commission Right to Union representation Conciliation & arbitration available

WHAT CAN YOU DO?

Appoint the SDA as your bargaining agent.

The SDA represents over 210,000 employees across Australia in retail and other industries.

You are legally entitled to representation during the AWA process. The SDA can provide the information, support and representation necessary to secure a fair go.

The SDA has already contacted Krispy Kreme to initiate discussions regarding the proposal on behalf of many of your work colleagues. By appointing the SDA as your bargaining agent, you can also access this support.

ITS EASY

Complete the attached bargaining agent form and return it in the attached reply paid envelope or contact the Union to arrange an Organiser to collect.

Remember, you have at least fourteen (14) days from the time you were given the AWA to consider the proposal before you may be asked to sign the document.

Don't sign it unless you are satisfied with the full proposal.

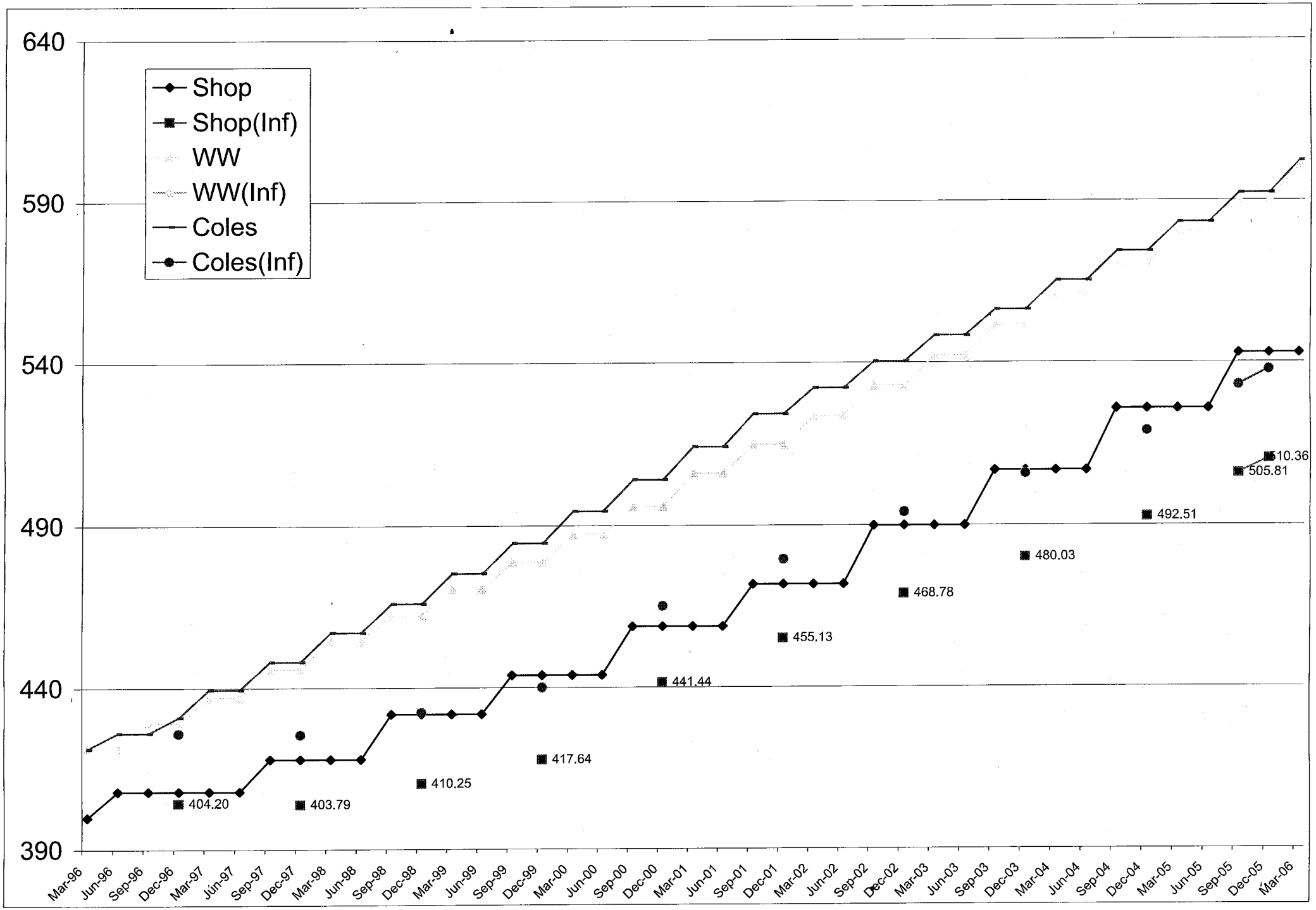
Should you have any questions about the proposed AWA, please contact your Organiser, Mr Mark O'Connor, who will assist you with any questions. You can contact the SDA at our Sydney office on 9281 7022 or 1300 365 995.

You are legally entitled to representation. Don't short change your working conditions. Above all, don't focus on what is in the Kripsy Kreme wages doughnut but what is missing in the middle!

Greg Donnelly
BRANCH SECRETARY-TREASURER

UN 280703

Annexure “D”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Annexure “E”

Form 43
General Form of Affidavit

BEFORE THE INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

or as required by Schedule 1

No. IRC 2911 of 2005

In the matter of:

STATE WAGE CASE 2005

AFFIDAVIT

Deponent: Louise Maree Herrmann

Date: 16 June 2005

Filed on Behalf of:
The Applicant

Filed by:
Labor Council of New South Wales

Contact name:
Matt Thistlethwaite

Address:
10th Floor, Labor Council Building
377-383 Sussex Street
Sydney NSW 2000

Telephone:(02) 9264 1691
Facsimile: (02) 9261 3505

On 16 June 2005,

I, Louise Maree Herrmann,

, say on oath:

As per attached Schedule "A"

Sworn by the deponent)
at Wollongong)

L Herrmann
Louise Maree Herrmann

Before me:)

NSW J.P.
Justice of the Peace

WITNESS STATEMENT OF LOUISE MAREE HERRMANN

1. My full name is Louise Maree Herrmann.

2. My [redacted]

3. I am 41 years of age.

4. I have three dependents living at home including my disabled husband and two sons, [redacted], aged 7, who suffers from severe haemophilia A, and, 10 years old.

Income and Work

5. I have been continuously employed as a shop assistant by Spotlight at Crown Street, Wollongong, for 17 years. This service has included two periods of unpaid maternity leave for the birth of my two sons. During that time I have been employed on a full-time basis as both a shop assistant and department manager, on a casual basis upon return from maternity leave and, currently, on a part-time basis.

6. I am currently engaged on a part-time basis pursuant to the terms and conditions of the *Shop Employees' (State) Award.* I regularly work between 13.5 hours and 18 hours per week.

7. I am paid according to the minimum part-time hourly rate of pay provided by the Award, which is currently $13.84 per hour. The equivalent weekly wage is currently $525.80 per week.

8. I do not receive additional payments from Spotlight other than an occasional bonus generally paid at Christmas. It is worth approximately $200 per year.

9. My gross wage is generally $200 - $210 per week, inclusive of all penalties, loadings and allowances paid in accordance with the Award. I am paid weekly and my after tax take home pay is approximately $180 - 190 per week.

10. I receive no other income from work at Spotlight and do not have any other employment or investment income.

11. My family receives the following social security payments:

Parenting Payment	$250 per fortnight	($125 per week)
Carers' Payment	$92 per fortnight	($46 per week)
Family Allowance	$301 per fortnight	($150.50 per week)

12. My husband is disabled and receives the following social security payment:

Disability Allowance	$365 per fortnight	($182.50 per week)

13. Many of the social security payments are means tested so that they vary, increasing and decreasing, with the income I earn. Therefore, the payments and earnings provided reflect the usual income earned by our family.

14. Weekly Income:

Item	Amount (as earned)	Amount (weekly)
Wages	$185 weekly	$185.00
Parenting Payment	$250 fortnightly	$125.00
Carers' Payment	$92 fortnightly	$46.00
Family Allowance	$301 fortnightly	$150.50
Disability Allowance	$365 fortnightly	$182.50
Total		**$689.00**

Living Arrangements and Expenses

15. My husband does not work and is currently in receipt of a disability allowance. My sons are at primary school.

16. I do not receive any other income from assets, investments, family members, friends, Government or charitable organisations other than those detailed above.

17. Our home is mortgaged and I generally make a fortnightly repayment of $100.

18. I generally save $200 per month for security against unexpectedly higher bills, birthdays, Christmas and car repairs.

19. During the course of 2005 I have purchased a new stove for $1200. I am currently paying off the credit card for that purchase. I am currently paying off $100 per month and looking forward to clearing all debt on that card. It is not used generally for day to day purchases.

20. Bills are generally paid on time. I am conscious of the family budget to ensure that I am able to pay and to avoid late fees.

21. Our household items are in working condition and do not require replacement at this time.

22. I am conscious about clothing purchases. I do not tend to purchase the latest fashion items for my family or myself. Such items are unaffordable and we can do without them. I tend to put off their purchase until they are no longer new season and become more affordable. I am budget conscious and look

for sales, bargains and discounts to ensure that my family does not go without their basic needs.

23. I have modest education costs as my sons attend a public school. I contribute approximately $200 per year to fund raising drives at the school. The school provides most books and equipment required. I only purchase additional books / stationery on an occasional basis and could not suggest any ongoing expense for these items. School clothing is paid out of the family clothing expenses.

24. Our internet computer connection is primarily used by my sons for school purposes and entertainment.

25. Our family makes the best of its limited means to spend time away from home doing the following activities together:

- Lunch at the local club once a fortnight;
- Ten Pin Bowling; and
- Occasional visit to the cinemas.

26. I have to be vigilant about some of the activities that my sons would like to participate in. I have to place limits on their hobbies, for example I recently refused my 10 year old son [redacted] from participating in indoor soccer. I had already committed the time and money toward swimming and ten pin bowling and couldn't afford the expense of another activity on top. In addition, the activity was scheduled for Sundays and I am occasionally required to work on Sundays.

27. The two biggest concessions that our family has made due to our limited means are holidays and a new car.

28. Our family has not enjoyed a holiday away from home together for some time. The last occasion on which we took holidays away from home was a weekend away 2 years ago.

29. If our family had more money it would be nice to replace our car. Our family car is a 1984 model and it is becoming more and more unreliable. We cannot currently afford a new car due to my modest wage and the ongoing burden of paying off the mortgage I would like to buy a new car within the next 2 years if possible. Our car is not currently regularly serviced as that is too expensive and my husband tends to look after most minor mechanical repair work. The savings account operates as an emergency fund for more expensive repair work.

30. Our family has two pre-paid mobile phones. We decided to use the pre-paid mobile arrangement because of the expense likely to be incurred if they were used regularly. They are used only for rare and emergency situations.

31. Below is an estimate of my family weekly expenditure. Some items are averaged in accordance with the expenditure pattern:

Item	Amount (as spent)	Amount (weekly)
Mortgage	$100 fortnightly	$50.00
Electricity	$300 quarterly	$23.10
Gas	$50 quarterly	$3.80
Water	$90 quarterly	$6.90
Council Rates	$150 quarterly	$11.50
Education	$200 yearly	$3.80
Food & Groceries	$225 weekly	$225.00
Alcohol / Cigarettes	Incl. in groceries	-
Clothing & Footwear	$2000 yearly	$38.50
Internet	$17 monthly	$3.90
Telephone	$50 monthly	$11.50
Mobile Phone (pre-paid) x 2	$120 yearly	$2.30
Home Insurance	$300 yearly	$5.80
Contents Insurance	$250 yearly	$4.80
Medical Insurance	$91 ($63.70) monthly	$21.00 ($14.70)*
Dentist's / Doctor's Visits	$1500 yearly	$28.80
Medicine	$10 weekly	$10.00
Motor Vehicle Insurance	$85 yearly	$1.60
Motor Vehicle Registration	$290 yearly	$5.60
Petrol	$50 weekly	$50.00
Recreation / Entertainment	$50 weekly	$50.00
Furniture / Electrical	$1500 yearly	$28.80
Home Maintenance	$500 yearly	$9.60
Pets (ducks)	$10 monthly	$2.30
Gifts (e.g. Christmas, birthdays)	$2000 yearly	$38.50
Haircuts	$200 yearly	$3.80
Union Fees	$4.70 weekly	$4.70
Total		**$645.60 ($639.30)***

* N.B. Less the private health insurance rebate.

32. I endeavour to save approximately $200 per month after all expenses are paid.

General Standard of Living

33. My income restricts our quality of life by providing just enough on top of social security payments for the necessities of life, with little left for recreation or leisure. There are many things that we would like to do that others take for granted. We simply cannot afford to do those things because of the limitations imposed by our income.

34. On my present income it is difficult to afford holidays, a new car, home improvements or any other items that might improve our standard of living.

35. Recent repairs to the house, to replace rotting wood, could only be afforded through redrawing on the savings on our mortgage.

36. The next tem that we need to replace is the family car. It is over 20 years old, worn out and becoming unreliable. It is something to aim towards in the next 2 years unless something untoward intervenes.

37. It would be nice to spend a little extra money on the boys if we had more time and a better wage.

L Herrmann
Louise Maree Herrmann

16-06-05
Date

Annexure “A”

Terms of Reference

1. That the Standing Committee on Social Issues inquire into and report on the impact of Commonwealth WorkChoices legislation on the people of New South Wales, and in particular:

(a) the ability of workers to genuinely bargain, focusing on groups such as women, youth and casual employees and the impact upon wages, conditions and security of employment,

(b) the impact on rural communities,

(c) the impact on gender equity, including pay gaps,

(d) the impact on balancing work and family responsibilities,

(e) the impact on injured workers, and

(f) the impact on employers and especially small businesses.

Annexure “B”

AUSTRALIAN WORKPLACE AGREEMENT (AWA)

In accordance with Part 8 of the *Workplace Relations Act 1996 (C'th)*

BETWEEN

Employer: POW JUICE PTY LTD **A.B.N:** 21 118 547 863

AND

Employees of the Employer bound by this Agreement

1. Contents

1.1 This Agreement is set out in the following manner.

Clause No.	Subject Matter
1.	Contents
2.	Definitions
3.	Duration & Scope of the Agreement
4.	Contract of Employment
5.	Probation & Termination
6.	Classifications
7.	Ordinary Hours of Work
8.	Rosters
9.	Minimum Wages for Ordinary Hours
10.	Traineeships
11.	Public Holidays
12.	Superannuation
13.	Annual Leave
14.	Sick/Carer's Leave
15.	Compassionate Leave
16.	Unpaid Carer's Leave
17.	Parental Leave
18.	Dispute Resolution Procedure
SCHEDULE A	Minimum rates of pay
SCHEDULE B	Signatures

2. Definitions

'Act'	Means the **Workplace Relations Act 1996 (C'th)** as amended.
'Additional Hours'	Means all hours worked outside ordinary hours as defined in Clause 7.
'Agreement'	Means this agreement.
'AFPC'	Means the Australian Fair Pay Commission, pursuant to the Act.
'APCS'	Means the Australian Pay and Classification Scales, pursuant to the Act.
'Award'	Means the ***[601] Shop Employees (State) Award*** and ***[4165] Retail Industry (State) Training Wage Award***, as appropriate.
'Classifications'	Means the following classifications in the Award/s: • Shop Assistant; • Shop Assistant in Charge (without buying duty; 0-4 assistants); • Wage Level A (under the Retail Industry, etc Award) or, where appropriate, the APCS, as determined pursuant to the Act.
'Company'	Has the same meaning as 'Employer'
'Employer'	Means **POW JUICE PTY LTD** and includes successor Employers, subject to Part 11 of the Act.
'Employee/s'	Means Employee/s of the Employer covered by this Agreement.
'OEA'	Means the Office of Employment Advocate, pursuant to the Act.
'Parties'	Means the Employer and Employee/s
'Protected Allowable Award Matters'	Are as defined in Section 354 of the Act, and include provisions of the Award dealing with rest breaks, incentive based payments and bonuses, annual leave loading, State and Territory specific public holidays, allowances, loadings for overtime and shift work, penalty rates, outworker conditions and any other matter specified in the Regulations.
'Regulations'	Means the **Workplace Relations Regulations 2006 (C'th)**, as amended.

3. Duration & Scope of the Agreement

3.1 This Agreement shall have a nominal term of 5 years from the date on which the Agreement is lodged with the OEA.

3.2 This Agreement provides for minimum legal entitlements only, and shall not restrict the Employer and Employee/s from agreeing to higher rates of pay, or additional benefits.

3.3 All Protected Allowable Award Matters as defined are expressly excluded from operation by this Agreement.

4. Contract of Employment

4.1 The employment status of Employees shall be as agreed between the Parties and recorded in writing. This status will be permanent or casual.

4.2 Casual Employees will be entitled to the appropriate casual rate of pay in Schedule A, Part 2, which includes a casual loading of 20%.

5. Probation & Termination

5.1 Permanent Employees will initially be employed on 6 months probation (the "Probation Period"). The Employer may at any time during or on completion of the Probation Period confirm the permanent Employee's ongoing employment with the Employer.

5.2 Termination of the employment relationship of permanent Employees is by notice or payment in lieu of notice (in the case of the Employer), or forfeiture of pay (in the case of the permanent Employee), in accordance with the following table:

Permanent Employee's period of continuous service with the Employer	**Period of notice**
Not more than 1 year	At least 1 week
More than 1 year but not more than 3 years	At least 2 weeks
More than 3 years but not more than 5 years	At least 3 weeks
More than 5 years	At least 4 weeks

In addition to the notice specified above, permanent Employees 45 years of age or over and who have completed at least 2 years' continuous service with the Employer shall be entitled to an additional week's notice.

5.3 The provisions of clause 5.2 shall not apply to casual Employees, who are engaged and paid by the hour.

5.4 Nothing in this Agreement shall affect the right of the Employer to dismiss an Employee without notice where the Employee is guilty of serious misconduct. For the purposes of this clause, serious misconduct includes:

5.4.1 Wilful, or deliberate, behaviour by an Employee that is inconsistent with the continuation of the contract of employment, including:

i. theft; or
ii. fraud (including falsifying time records); or
iii. assault; or
iv. the Employee being intoxicated at work (as specified in the Regulations); or
v. the Employee refusing to carry out a lawful and reasonable instruction that is consistent with the Employee's contract of employment; or

5.4.2 Conduct that causes imminent, and serious, risk to:

i. the health, or safety, of a person; or
ii. the reputation, viability or profitability of the Employer's business.

5.5 Upon termination of employment, the Employee shall immediately return all documents, publications, manuals, corporate uniforms and other property, which are in the Employee's possession as a consequence of that employment.

6. Classifications

6.1 Each Employee is classified as assessed by the Employer as follows:

6.1.1 Level 2 Supervisor - Employees who perform Level 1 duties with a high level of proficiency and are appointed by the Employer to train and supervise staff Monday to Sunday.

6.1.2 Level 1 Competent - Employees requiring training and supervision and undertaking duties, when assessed as competent, principally involved in the preparation and sale of food and beverages.

7. Ordinary Hours of Work

7.1 Ordinary hours of work for Employees will not exceed 38 hours per week on average over 52 weeks.

7.2 An Employer may require an Employee to work reasonable Additional Hours. The Employee may refuse to work Additional Hours where this would result in the Employee working hours which are unreasonable, having regard to:

7.2.1 Any risk to the Employee's health and safety;
7.2.2 The Employee's personal circumstances, including any family responsibilities;
7.2.3 The needs of the workplace or enterprise; and
7.2.4 The notice (if any) given by the Employer of the Additional Hours and by the Employee of his or her intention to refuse it.

7.3 All Additional Hours shall be paid at the applicable ordinary hourly rate unless otherwise agreed in advance and in writing.

8. Rosters

8.1 As far as practically possible, the Employer will draw up a roster 1 week in advance. Changes to rosters may occur with 24 hours notice or, subject to the availability of the Employee, with less notice if by mutual consent.

9. Minimum Wages for Ordinary Hours

9.1 The legal minimum rates of pay for each hour worked by Employees are as specified in Schedule A to this Agreement, and will be adjusted to reflect movements to the applicable Award or equivalent APCS rates made by the AFPC.

9.2 The leave loaded hourly rate in Schedule A incorporates payment in advance and in lieu of 2 weeks paid annual leave *(see clause 13.2)*.

10. Traineeships

10.1 The minimum rates of pay for Trainees are specified in Schedule A, Part 3, to this Agreement.

10.2 For the purposes of this Clause:

10.2.1 ***Traineeship Agreement*** means an agreement between an Employer and a permanent Employee that is registered with the relevant State or Territory training authority or under a law of a State or Territory relating to the training of Employees.

10.2.2 ***Trainee*** means a permanent Employee (other than an apprentice) who is bound by a Traineeship Agreement.

11. Public Holidays

11.1 The following days are public holidays: New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Christmas Day and Boxing Day, and any other gazetted public holidays in the relevant state or territory in which the work is being performed, other than:

11.1.1 a union picnic day; or
11.1.2 a day, or kind of day, that is excluded by the Regulations from counting as a public holiday

11.2 The Employer may request the Employee to work on a particular public holiday. The Employee may refuse the request (and take the day off) if the Employee has reasonable grounds for doing so, in accordance with the provisions of Part 12, Division 2, of the Act.

12. Superannuation

12.1 The Employer shall contribute, on behalf of the Employee, superannuation to a fund that will be nominated by the Employer, in accordance with the requirements of the relevant, prevailing superannuation legislation.

13. Annual Leave

Leave Unloaded Rate Permanent Employees

13.1 All leave unloaded rate permanent Employees are entitled to 4 weeks' paid annual leave per year of continuous employment. Annual leave accrues on a pro-rata basis for each completed four week period of continuous employment.

Leave Loaded Rate Permanent Employees

13.2 Where a permanent Employee has requested in advance and in writing to "cash-out" 2 weeks' paid annual leave, they shall be paid the applicable leave loaded rate in this Agreement, and will be entitled to 2 weeks' paid annual leave per year of continuous employment. Annual leave accrues on a pro-rata basis for each completed four week period of continuous employment.

13.3 Annual leave entitlements are cumulative.

13.4 To avoid doubt, paid annual leave entitlements shall not apply to casual Employees.

14. Sick/Carer's Leave

14.1 Subject to clause 14.2, a permanent Employee who is unable to attend or remain at his/her place of employment due to personal illness or personal incapacity, shall be entitled to pay at the appropriate ordinary hourly rate as follows:

14.1.1 Up to 10 days sick pay for each year of continuous employment, accruing on a pro-rata basis for each completed four week period of continuous employment. The Employee will be paid the amount the Employee would otherwise have been paid had the Employee worked during that period.

14.1.2 Unused sick leave entitlements shall be cumulative.

14.1.3 Permanent Employees are entitled to access a maximum of 10 days per year of their sick leave entitlement to provide care or support to a sick or injured immediate family or household member, as defined by the Act.

14.2 To be eligible for benefits in clause 14.1 the permanent Employee must comply with the following conditions:

14.2.1 The permanent Employee shall, where practicable, advise the Employer of his/her inability to attend for work at least 3 hours prior to the commencement of their shift and as far as possible the nature of the illness and the estimated period of absence.

14.2.2 The permanent Employee shall produce a medical certificate or other satisfactory evidence to prove the permanent Employee's inability to attend for duty on the days in respect of which sick or carer's leave is claimed.

14.2.3 A permanent Employee shall not be entitled to paid sick leave for any period in respect of which he or she is entitled to workers compensation.

14.3 Paid sick/carer's leave entitlements do not apply to casual Employees.

15. Compassionate Leave

15.1 Permanent Employees are entitled to a period of 2 days compassionate leave per occasion if:

15.1.1 A member of the Employee's immediate family or household, as defined by the Act:

(i) contracts a personal illness that poses a serious threat to his/her life; or
(ii) sustains a personal injury that poses a serious threat to his/her life; or
(iii) dies; and

15.1.2 The claim for compassionate leave has been made by the Employee in accordance with the Employer's compassionate leave claims policy and procedure.

15.2 Paid compassionate leave entitlements do not apply to casual Employees.

16. Unpaid Carer's Leave

16.1 Permanent and casual Employees are entitled to a period of up to 2 days unpaid carer's leave for each occasion (a permissible occasion) when an Employee's immediate family or household member, as defined by the Act, requires care or support during such a period because of:

16.1.1 A personal illness or injury; or
16.1.2 An unexpected emergency.

16.2 An Employee is entitled to unpaid carer's leave only if the Employee complies with the notice and documentation requirements under clause 14.2, to the extent to which they apply to the Employee.

16.3 A permanent Employee is only entitled to unpaid carer's leave for a particular permissible occasion if the Employee has exhausted all of their paid sick/carer's leave entitlement.

17. Parental Leave

17.1 Eligible Employees, as specified under Part 7, Division 6 of the Act, will be entitled to parental leave in accordance with the Act.

18. Dispute Resolution Procedure

18.1 All disputes or grievances arising between the Employer and Employees shall as far as practical be resolved at the workplace level through consultation among all of the parties within the Employer. Accordingly the following procedure must be followed:

18.1.1 Initially the Employee shall discuss any grievance, dispute or claim with their immediate supervisor;

18.1.2 If the matter is not resolved at such a meeting, the parties may hold further discussions with appropriate senior levels of management;

18.1.3 If the matter cannot be resolved at the workplace level, the parties agree to refer the matter to Enterprise Initiatives Pty Ltd who will engage a third party mediator to mediate the dispute. Any such mediator will conduct the mediation in accordance with the provisions of Part 13, Division 6 of the Act.

18.2 To the extent that the dispute concerns Employee entitlements or Employer obligations under the Agreement the Employer will ask for the Employee's agreement to seek advice from EI Legal Pty Ltd.

18.3 This dispute resolution procedure does not apply to Employees where the Employer has given notice and reasons for termination according to clause 5 of the Agreement.

18.4 Where the parties agree to pursue mediation the parties:-

18.4.1 Will participate in the mediation process in good faith;

18.4.2 Acknowledge the right of either party to appoint in writing, another person to act on behalf of the party in relation to the mediation process;

18.4.3 Agree not to commence any action against the other party; and

18.4.4 Agree that during the time when the parties attempt to resolve the matter:

i) the parties continue to work in accordance with their contract of employment unless the employee has a reasonable concern about an imminent risk to his or her health or safety; and

ii) subject to relevant provisions of any State or Territory occupational safety law, even if the Employee has a reasonable concern about an imminent risk to his or her health or safety, the Employee must not unreasonably fail to comply with a direction by his or her Employer to perform other available work, whether at the same workplace or another workplace, that is safe and appropriate for the Employee to perform; and

iii) the parties must cooperate to ensure that the dispute resolution procedures are carried out as quickly as is reasonably possible.

SCHEDULE A – MINIMUM RATES OF PAY

*** *NOTE*: ALL RATES AND LOADINGS ARE CURRENT AT THE TIME OF PRINTING AND ARE SUBJECT TO ADJUSTMENT BY THE AFPC.**

Part 1 - Permanent Employees

	Leave Loaded Hourly Rate $*	*Leave Unloaded Hourly Rate $*
Level 2	15.14	14.57
Level 1		
Under 16 years of age	5.95	5.72
16 years of age	7.42	7.14
17 years of age	8.90	8.57
18 years of age	10.39	10.00
19 years of age	11.87	11.43
20 years of age	13.36	12.86
21 years and over	14.83	14.28

** see Clause 13.2 of this Agreement*

Part 2 - Casual Employees

	Casual Hourly Rate $
Level 2	17.48
Level 1	
Under 16 years of age	6.86
16 years of age	8.57
17 years of age	10.28
18 years of age	12.00
19 years of age	13.72
20 years of age	15.43
21 years and over	17.14

Part 3 - Trainees**

** NOTE: APPLIES ONLY TO PERMANENT EMPLOYEES EMPLOYED UNDER A TRAINEESHIP AGREEMENT THAT HAS BEEN REGISTERED WITH THE APPROPRIATE STATE OR TERRITORY TRAINING AUTHORITY. SEE CLAUSE 10.

	Leave Loaded Hourly Rate* $	*Leave Unloaded Hourly Rate* $
Under 17 years	6.05	5.82
17 years of age	6.64	6.39
18 years of age	8.01	7.71
19 years of age	9.30	8.95
20 years of age	10.83	10.42
21 years and over	12.38	11.92

** see Clause 13.2 of this Agreement*

SCHEDULE B - SIGNATURES

We hereby certify that we agree to the terms of this Australian Workplace Agreement:

(1) EMPLOYER:

In accordance with Part 8, Division 12 (Regulation 8.12) of the *Workplace Relations Regulations 2006*

SIGNED FOR AND ON BEHALF OF THE EMPLOYER
I, the undersigned, am authorised to sign this Agreement for and on behalf of the Employer, on the basis of my position with the Employer, as indicated below:

Signed_____ Date _____

Name in full (printed) _____

Position _____

Address _____

_____

_____

EMPLOYER'S WITNESS

Witnessed By_____ Date _____

Witness Name in full (printed) _____

Position _____

Address _____

_____

_____

[where Employee is over the age of 18]

(2) EMPLOYEE:

In accordance with Part 8, Division 12 (Regulation 8.12) of the *Workplace Relations Regulations 2006*

EMPLOYEE

I, the undersigned declare that I have read and understand this Agreement and that I am in agreement with the minimum terms and conditions of my employment:

Signed_____ Date _____

Name in full (printed) _____

DOB _____

Address _____

_____

_____

EMPLOYEE'S WITNESS

Witnessed By_____ Date _____

Witness Name in full (printed) _____

Position _____

Address _____

_____

_____

[alternative – where Employee under the age of 18]

(2) EMPLOYEE UNDER THE AGE OF 18:

In accordance with section 98C of the *Workplace Relations Act 1996*

EMPLOYEE
I, the undersigned declare that I have read and understand this Agreement and that I am in agreement with the minimum terms and conditions of my employment:

Signed_____ Date _____

Name in full (printed) _____

DOB _____

Address _____

_____

_____

EMPLOYEE'S WITNESS

Witnessed By_____ Date _____

Witness Name in full (printed) _____

Position _____

Address _____

_____

_____

Annexure “F”

Billy's Wages ...

Billy the full-time Shop Assistant

Billy is an unemployed job seeker who is offered a full-time job by Costas who owns a clothing retail store in Canberra.
Billy is required to be in charge of the shop, responsible for supervising 2 employees but does not have buying duties.
His terms and conditions of employment are governed by an AWA providing the Fair Pay and Conditions Standard and expressly excluding all other relvevant Award condtions.
The Retail and Wholesale - Shop Employees' - Australian Captial Territory - Award 2000 would otherwise apply.
Billy is engaged on the basis that he works Monday to Saturday every week including 8 hours overtime each Saturday.
Billy is provided with and required to wear a uniform as part of his work.
Billy is required by his employer to use his own 2000 cc private vehicle once per week during working hours to transfer stock to another store owned by Costas. This involves a 30 km round trip.
Billy agrees to work on every public holiday except Christmas Day, Boxing Day and Good Friday.

Billy's working hours are:

Day	*Start*	*Finish*	*Meal*	*Hours*
Monday	9:00	17:30	1:00	7.5
Tuesday	9:00	17:30	1:00	7.5
Wednesday	9:00	17:30	1:00	7.5
Thursday	9:00	17:30	1:00	7.5
Friday	9:00	18:00	1:00	8
Saturday	8:00	17:00	1:00	8
Sunday	Off			
Total hours				**46**

Wages and Superannuation

Wages

Ordinary Weekly Wage	Saturday Overtime 1	Overtime Rate 1	Saturday Overtime 2	Overtime Rate 2		Total
$553.70	2	$21.855	6	$29.140		$772.25

Uniform Allowance
$8.60 per week $8.60

Travel Allowance
$30.00 km @ $0.49 per km $14.70

Superannuation*
9 % of $553.70 $49.83

Average weekly earnings (including wages, allowances and supernnuation) $830.68

* N.B. Superannuation has been calculated on the basis that it includes all loadings, penalties and work related allowances, but not on overtime as per ATO Ruling 94/4 regarding OTE definition for superannuation.

Comparison of the current Retail and Wholesale Employees - Shop Employees - ACT - Award 2000 Conditions and AWA based on proposed Fair Pay and Conditions Standard

Billy the full-time Shop Assistant

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

Shop Award Earnings

Annual leave	4	weeks	@	$553.70	per week				$2,214.80
17.5% annual leave loading									$387.59
Sick leave	2	weeks	@	$553.70	per week				$1,107.40
Superannuation on leave*	9	%	of	$3,322.20					$299.00
Average weekly earnings over	46	weeks	@	$830.68	per week				$38,211.28
Additional public holiday penalties	7.6	hours	@	$21.86	per hour	@	8	public hol.s	$1,329.09
Additional super on P.H. penalties	9	%	of	$1,329.09					$119.62
Totals									**$43,668.77**

AWA Earnings

4	weeks	@	$553.70	per week	$2,214.80
					$0.00
2	weeks	@	$553.70	per week	$1,107.40
9	%	of	$3,322.20		$299.00
46	weeks	@	$730.54	per week**	$33,604.84
					$0.00
					$37,226.04

Difference ***$6,442.74 per annum***

14.75 % lost earnings

* Superannuation on leave does not include the annual leave loading component as per the ATO 94/4 ruling on OTE.
** This AWA weekly earnings is based on:

46 hours @	$14.57 per hour	$670.22
9 %	Superannuation	$60.32
Total		**$730.54**

Annexure “G”

Same work, $40 less: take it or leave it

Kelly Burke

AMBER OSWALD is a forthright and enthusiastic 16-year-old who was thrilled when she scored her first part-time job early last month, at a juice bar in Warriewood.

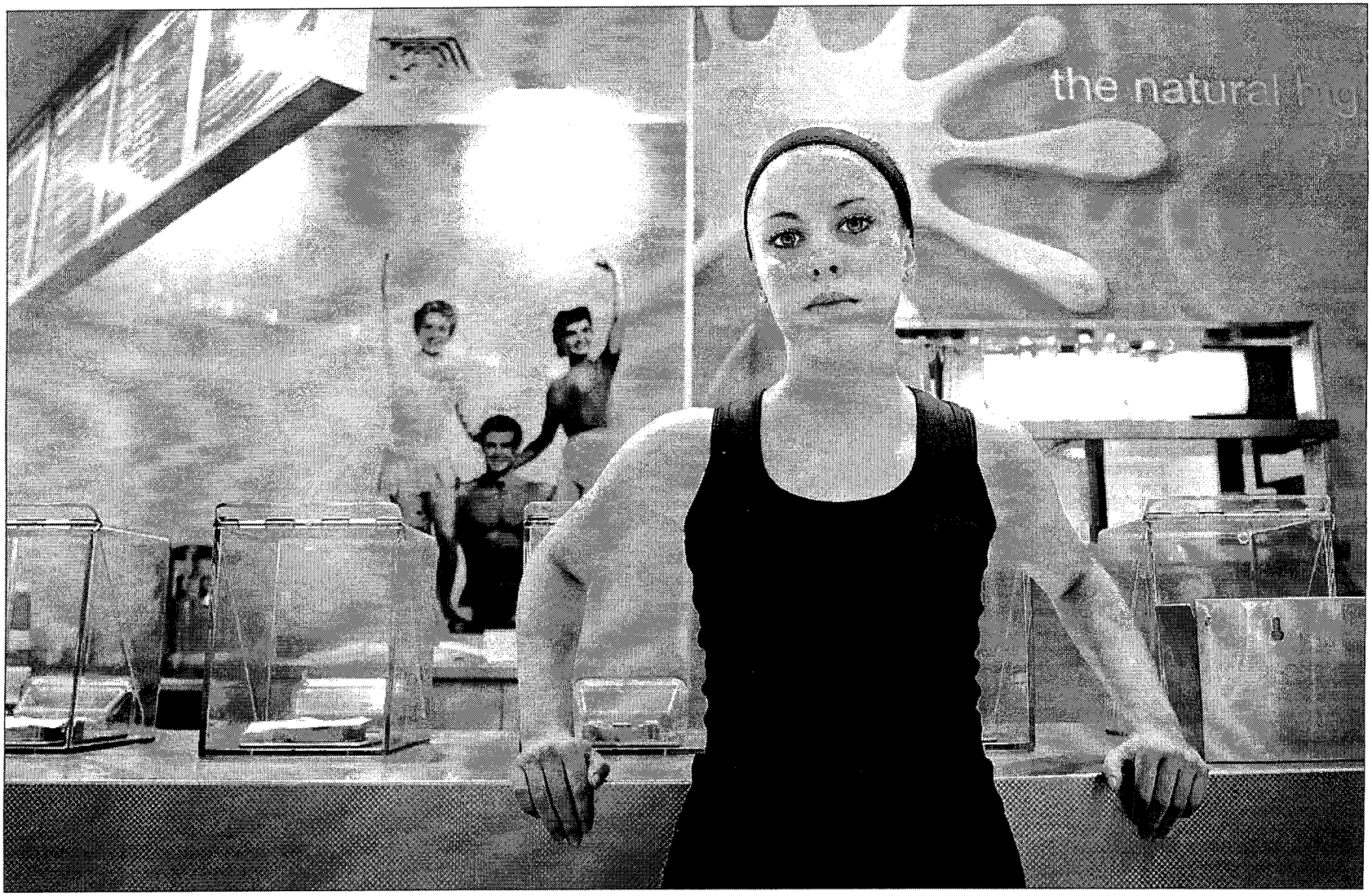
But on March 29, two days after the Federal Government's new workplace laws came into effect, Amber learned that she had been made redundant and then "rehired".

She was now party to an Australian workplace agreement. The contract remains unsigned, despite taking effect from March 27 – day one of the new laws.

Amber saw her new contract for the first time only yesterday, which confirmed that her hourly pay rate had dropped from $9.52 to $8.57 and her penalty rates had been abolished altogether, reducing her pay by $5.70 an hour on Sundays and by as much as $11.25 an hour on public holidays.

"If they don't want to sign, they can leave. It's not about what's fair, it's [about] what's right – right for the company."

ANDRE, Pow Juice



Rehired ... Amber Oswald is unhappy with the new contract she has been offered by her employer, Pow Juice. All penalty rates have been abolished under the contract. Photo: Grant Turner

"I'm pretty upset they can do that," Amber said yesterday after finishing a seven-hour shift that would have earned her $99.89 before tax two weeks ago but now pays just $59.99.

"I'm doing exactly the same job as before but I'm still young, so they think they can pretty much get away with it."

Amber's boss, who would only identify himself as Andre, said that between 15 and 20 staff at the three NSW Pulp Juice franchise shops had been given workplace agreements.

"If they don't want to sign, they can leave," he said. "It's not about what's fair, it's [about] what's right – right for the company."

He said a previous award became invalid after Pulp was placed into liquidation on March 24, effectively making all the staff redundant.

The AWAs were issued the same day by Pow Juice, which won a licensing agreement to run the three shops, and for whom he worked as a "consultant".

The president of the ACTU, Sharan Burrow, described Pow Juice's ultimatum to staff as outrageous.

"The new laws are a Government-sanctioned licence for employers ... to treat people in whatever way they choose, and young people and older workers, particularly women, are the most vulnerable," she said.

A spokeswoman for the federal Minister for Employment and Workplace Relations, Kevin Andrews, said the minister was not prepared to discuss individual cases. But anyone aged under 18 would require a parent or guardian to sign a workplace agreement, she said.

"Any examples of employees feeling they have been treated unfairly can take their claim to the Office of Workplace Services," she said.

A part-time medical receptionist, Rhonda Walke, received a similar assurance from the Liberals' Danna Vale last November. The recently widowed Ms Walke got a comprehensive reply from her local MP, which included assurances that it would be "unlawful for an employer to apply duress in the negotiation of agreements, or to terminate an employee for refusing to negotiate an AWA".

On March 29, Ms Walke was handed a workplace agreement by the office manager, who insisted she sign it immediately. Ms Walke declined, saying she wished to take it home to study it in depth. The following day she told the manager there were several points she needed to clarify before signing. At lunchtime she was served termination papers on the grounds that her reluctance to sign proved she did not wish to become part of a team.

Ms Walke's case, with two other allegedly illegal dismissals involving older women, are now being investigated by the ACTU.

Girl who took on boss squeezes more out of juice bar

Kirsty Needham

A JUICE bar worker, Amber Oswald, 16, will be paid $14 an hour when she turns up for her next shift on Sunday, her employer has told the Australian Industrial Relations Commission.

Pow Juice undertook to pay her according to her original employment conditions, and not the flat $8.57 an hour she and co-workers have been reduced to since new federal workplace laws came into effect on March 27.

The commission was told on Wednesday that Amber would receive back pay for lost wages, as would any other employee who had not signed a new Australian workplace agreement with the company.

'Anyone can stand up for themselves.'

AMBER OSWALD

Amber was taking piano lessons as her case was argued: "It's made me aware of what's going on and that anyone can stand up for themselves." Her father said: "We have to educate these other kids to put their hands up."

The NSW assistant secretary of the Shop, Distributive and Allied Employees Association, Bernie Smith, told the commission Pow Juice had "botched up" an attempt to have all employees sign a workplace agreement that he described as a "bare-bones deal".

On the eve of the introduction of the new workplace laws the juice bar was placed into liquidation and all staff made redundant. The same day, workplace agreements were offered by a new company, which started trading the next day.

Amber started her next shift without signing the agreement.

"The truly sad thing is that under the new laws if they had carried out their plan properly this commission would have no jurisdiction," Mr Smith said.

Pow Juice was represented by Ben Thompson of EI Legal, a division of a company that drafts workplace agreements for small businesses. At one point, the commissioner Peter Lawson threatened Mr Thompson with contempt, and later described his behaviour as "the most objectionable that I've seen in this commission for many, many years".

A spokesman for the NSW Minister for Industrial Relations, John Della Bosca, said: "The danger is that once businesses fully comprehend how to legally exploit workers under the [new] laws we are going to see more people having their wages cut and their entitlements stripped away."

A spokesman for Australian Business Limited said "teething issues" surrounding the new laws were understandable.

"It's made me aware of what's going on" ... Amber Oswald, whose wages were cut under new industrial laws. Photo: Paul Miller

Annexure “H”

No icing for doughnut employees

Author: Nik O'Malley Workplace Reporter
Date: 18/08/2005
Words: 498
Source: SMH

Publication: Sydney Morning Herald
Section: News and Features
Page: 2

Krispy Kreme doughnut workers were bullied into signing individual contracts that left them thousands of dollars a year out of pocket, two former employees have said in submissions to a Senate inquiry.

One former staff member, Thea Birch Fitch, 22, wrote that she felt she was left with **no** choice "but to sign the agreement.

"I sat in the manager's office in tears whilst I was told that I had to sign the agreement or I wouldn't get any hours and I wouldn't be promoted," she wrote.

Her submission to the inquiry into Australian Workplace Agreements said that under the contract she signed workers could be expected to work 10 consecutive days without overtime pay, work more than 12 hours without overtime and work split shifts without overtime.

Ms Birch Fitch said that as well as losing allowances for uniforms and transport, she was paid $53 a week less under the contract than she was paid under her award.

The Federal Government is pushing workplace agreements as part of its proposed workplace changes. The Prime Minister, John Howard, says they will provide a more flexible workforce and a stronger economy. While it is illegal to force workers to sign such agreements, the state secretary of the Shop, Distributive and Allied Employees Association, Gerard Dwyer, said it was common for workers to be put under pressure.

Another Krispy Kreme employee, Jasmin Smith, wrote: "My manager approached me every shift and asked where my signed agreement was."

Ms Smith, who was 18 at the time she was presented with the agreement in 2003, said that she lost overtime rates between 12pm and 6am, fixed Saturday loadings, 50 per cent penalty rates on Sundays and a uniform allowance. Her base hourly pay rate was also cut.

She said that on the day the Penrith Panthers celebrated a minor premiership win in 2003 she worked 16 1/2 hours without any overtime loading.

She later resigned after lodging a sexual harassment claim against a manager, which she says was ignored by Krispy Kreme.

The two submissions were prepared with the help of the union.

Last night a spokesman for Krispy Kreme denied any workers had been forced to sign individual contracts. He said those on contracts received hourly pay rates above the award.

"All [agreements] are assessed by the Office of the Employment Advocate to ensure that **no** employees suffer any disadvantage working under those terms and conditions," he said.

"Any allegations of inappropriate behaviour are taken extremely seriously by the company,

addressed promptly, thoroughly and dealt with in accordance with a clear published procedure made available to all employees."

The secretary of the ACTU, Greg Combet, said the "holy grail" of the Government and business was to eradicate all penalties and allowances through workplace agreements.

Annexure “I”

Comparison of the current Shop Employees' (State) Award (NSW) Conditions and AWA based on proposed Fair Pay and Conditions Standard

Pat the Part-time Shop Assistant

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

Shop Award Earnings

Annual leave	4	weeks @	21	hours @	$14.285	per hour	$1,199.94
17.5% annual leave loading							$209.99
Sick leave	1.6	weeks @	21	hours @	$14.285	per hour	$479.98
Superannuation on leave*	9	% of	$1,679.92				$151.19
Average weekly earnings over	46.4	weeks @	$418.92	per week			$19,437.89
Totals							**$21,478.99**

AWA Earnings

4	weeks @	21	hours @	$14.285	per hour	$1,199.94
						$0.00
2	weeks @	21	hours @	$14.285	per hour	$599.97
9	% of	$1,799.91				$161.99
46	weeks @	$326.98	per week**			$15,041.25
						$17,003.15

Difference ***$4,475.84 per annum***

20.84 % lost earnings

* Superannuation on leave does not include the annual leave loading component as per the ATO 94/4 ruling on OTE.
** This AWA weekly earnings is based on:

21 hours @	$14.285 per hour	$299.99
9 %	Superannuation	$27.00
Total		**$326.98**

Pat the part-time Shop Assistant

Pat is a part-time shop assistant working in an independent liquor shop.
Her terms and conditions of employment are now governed by an AWA providing the Fair Pay and Conditions Standard and expressly excluding all other relvevant Award condtions.
Pat used to be employed on Award conditions but agreed to sign the AWA when told it would be good for the business and she believed the Government when it said that AWAs provided for "higher wages".
The Shop Employees' (State) Award (NSW) would otherwise apply.
Pat works Thursday and Friday nights, Saturdays and Sundays.
Pat works these hours to ensure that her husband is home to look after her two daughters under the age of 5.
Pat was employed on the basis that she held a valid liquor licence.

Pat's working hours are:

Day	*Start*	*Finish*	*Meal*	*Hours*
Monday				
Tuesday				
Wednesday				
Thursday	17:00	21:00		4
Friday	17:00	21:00		4
Saturday	9:00	17:00	0:30	7.5
Sunday	10:00	16:00	0:30	5.5
Total hours				**21**

Wages and Superannuation

Wages

Ordinary Hours	Ordinary Rate	Saturday Hours	Saturday Rate	Sunday Hours	Sunday Rate		Total
8	$14.285	7.5	$17.855	5.5	$21.425		$366.03

Liquor Licence Allowance

$18.30 per week $18.30

Superannuation*

9 % of $384.33 $34.59

Average weekly earnings (including wages, allowances and supernnuation) **$418.92**

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

Annexure “J”

(3)

SPOTLIGHT PTY LTD

AUSTRALIAN WORKPLACE AGREEMENT

STATE:.....

RETAIL NON-SALARY

Employee name.....

1. PARTIES TO AND SCOPE OF AGREEMENT

1.1 The parties to this Agreement are Spotlight Stores Pty Ltd ("Spotlight") and the employee named in Schedule One ("you").

1.2 This Agreement shall only apply to your employment with Spotlight.

2. COMMENCEMENT AND EXPIRY

2.1 This agreement will have effect from latest of the following dates:

a) The commencement date set out in schedule 1; or
b) The day after the filing receipt is issued by the Office of the Employment Advocate; or
c) The actual date of the commencement of employment.

2.2 To avoid any doubt, if you are yet to be employed by us at the time that this agreement is lodged with the OEA, then its terms will only come into effect once your employment has commenced.

2.2 The nominal expiry date of this agreement will be the fifth anniversary of the date this agreement comes into effect.

2.3 This Agreement will continue to apply to your employment beyond its nominal expiry date and until this Agreement is replaced by a new Australian Workplace Agreement or is terminated in accordance with the Workplace Relations Amendment (Work Choices) Act 2005.

2.4 Spotlight may terminate this Agreement at any time after the nominal expiry date provided that you receive at least 2 weeks' notice in writing.

2.5 Should any provision of this Agreement be declared or determined to be illegal or invalid by final determination of any court or tribunal of competent jurisdiction, the validity of the remaining parts, terms or provision of this Agreement shall not be affected, and the illegal or invalid part, term or provision shall be deemed not to be part of this Agreement.

3. FILING OF AGREEMENT

3.1 This Agreement will be lodged by Spotlight with the OEA within 14 days of being signed by the parties and witnesses.

4. DUTIES AND RESPONSIBILITIES

4.1 You will initially be employed in the position identified in Schedule One. During your employment with Spotlight your position, location of work, hours and status of employment may change, however your employment will continue to be covered by this Agreement. You will be required to undertake such duties and use such equipment as Spotlight determine to be reasonably required to fulfil the proper performance of your position.

4.2 You will be initially employed at the Store location identified in Schedule One but you may be required to work at other locations, stores or premises either on a temporary or permanent basis.

Inability to attend work

4.3 It is a condition of employment that you notify Spotlight at least 30 minutes (and where possible one hour) prior to the time you are required to commence rostered or agreed working hours (except in extraordinary circumstances where it is not possible to do so) of your inability to attend work for any reason and provide an estimate of the duration of the absence.

Company Agreements and Procedures

4.4 You will be given a copy of Company and Staff Agreements and Procedures. You are required to comply with all undertakings, agreements and procedures, as varied from time to time, applicable to your employment. Any failure to abide by such undertakings and procedures may result in disciplinary action being taken against you in accordance with the Company's disciplinary procedure as amended from time to time.

5. PROBATION

5.1 Your employment is subject to a probationary period of 6 months. At any time during this period your contract of employment may be terminated by either party giving one day's notice to the other party.

5.3 A trial period also applies to employees who change from one position to another whether the change comes about as a result of a promotion or by agreement. During this trial period your performance and suitability for the new role will be assessed and if the Company determine that you are not performing to their required standards or you are otherwise not suited to the new role you will, on provision of one week's notice, be returned to your former position. Should there be a differential in pay between the two positions you will be paid the appropriate rate applicable to the position that you are returned to. The trial period in respect of this clause is 6 months, unless another period is agreed in writing between you and the Company.

6. TYPE OF EMPLOYMENT

6.1 Your employment status is as specified in Schedule One of this agreement and may be full time part time, casual or for a specified term or task Your employment status may be changed by agreement in writing at any time during the life of this agreement and in that event the remaining terms of this agreement will continue to operate.

6.2 Part time employees are entitled to receive the same benefits in respect of pay and annual and personal leave as a full time employee, such entitlement shall accrue on a pro rata basis.

7. REMUNERATION

Ordinary Rates of Pay

7.1 Unless otherwise expressly stated elsewhere in this agreement, Spotlight will pay you as a minimum the rates prescribed in Schedule Two for all work performed in accordance with this Agreement.

7.2 Your wage rate will be reviewed annually, and any increase in rate shall remain at the sole discretion of Spotlight.

Frequency of Pay and Leave payments

7.4 Your salary will be paid at least fortnightly by direct transfer into a bank, building society or credit union account nominated by you.

7.5 The Company may change the frequency of payment by giving one month notice but shall not extend the frequency beyond one calendar month nor reduce it below one week.

7.6 By entering into this Agreement you authorise Spotlight to deduct from your salary any amount in respect of any overpayment of salary.

Superannuation

7.7 Superannuation will be paid in accordance with federal superannuation guarantee legislation as amended from time to time.

7.8 Your employer superannuation contributions will be paid into the REST Superannuation Fund or should that fund become non compliant, such other fund as may be nominated by the Company.

Junior Rates

7.9 If you are under 21, your base hourly wage and penalty rates (if any) are calculated as a proportion of the classification to which you are appointed by Spotlight based on the following percentages of the Adult rate:

Under 16	40%
16- 17 years	50%
17- 18 years	60%
18- 19 years	70%
19- 20 years	80%
20 years	90%

21 years – Adult rates apply

8. HOURS OF WORK

Employees – other than salaried staff

8.1 You are required to work a maximum of 38 hours per week averaged over a 6 week cycle.

8.2 In addition you are expected to work any hours that are reasonably required for you to satisfactorily perform your duties. This will require work outside of your normal working hours and/or normal working days and on Public Holidays.

8.3 Ordinary hours of work may be rostered on any day Monday to Sunday inclusive. The store roster will be displayed 1 week in advance, provided that the roster may be varied to suit the stores operational requirements. Where the roster is varied you will be notified in advance.

8.4 Ordinary hours shall normally be a maximum of 38 hours per week, provided that you may be required to work reasonable additional hours. Additional hours will be paid at your base rate of pay.

8.5 The ordinary hours rostered each day are exclusive of any meal or rest breaks. You are entitled to take an unpaid meal break of at least 30 minutes when rostered to work more than 6 hours, provided that the taking of a meal break may be delayed to meet customer service requirements.

Full time employees

8.4 You will normally be required to work 10 days in each fortnight or by agreement, an alternative arrangement that ensures you maintain an average, over a 6 week period, of 38 ordinary working hours per week.

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.

Salaried Staff

8.6 You and Spotlight may agree to enter into a written agreement that provides for an annualised rate of pay. Your salary will then take into account the requirements of your position and the hours anticipated. Your salary shall compensate you for all hours worked.

All Staff

8.7 When determining whether the number of additional hours that you are required to work is reasonable, the company will take all relevant factors into account. Those factors may include, but are not limited to, the following:

a. Any risk to your health and safety that might reasonably arise if you worked the additional hours;
b. Your personal circumstances (including family responsibilities);
c. The operational requirements of your workplace;
d. Any notice given by the company of the requirement or request that you work the additional hours;
e. Any notice given by you of your intention to refuse to work the additional hours;
f. Whether any of the additional hours are on a public holiday; and
g. Your hours of work over the 4 weeks immediately before you are required to work the additional hours.

9. TERMINATION OF EMPLOYMENT

Notice by Spotlight to you

9.1 Subject to this clause, if you are engaged as a full time or part time employee and you have successfully completed your probationary period, your employment may be terminated at any time by Spotlight giving you the period of notice set out below or by the payment in lieu of notice:

Period of your continuous service	Period of Notice *
3 months waived	Short Notice
Not more than 1 year	1 week
More than 1 but not more than 3 years	2 weeks
More than 3 but not more than 5 years	3 weeks
More than 5 yeas	4 weeks

One week is added to the period of notice if you are over 45 years old and you have completed at least 2 years' continuous service with Spotlight.

Pay in lieu of notice

9.2 The payment in lieu of notice must equal the total of all amounts that, if your employment had continued until the end of the required notice period, Spotlight would have become liable to pay you. This total must be worked out on the basis of:

- your ordinary hours of work; and
- amounts ordinarily payable to you in respect of those hours.

Notice by you to Spotlight

9.3 You must give Spotlight notice of one week when you intend to terminate your employment.

9.4 If you terminate your employment and do not give the right amount of notice, or if you are directed to work during the notice period and, without authorisation, fail to work the required period, the company will be entitled to withhold an amount from your final pay equal to your ordinary time earnings for the period of notice that you failed to give, or failed to work

9.5 Any payments under the Spotlight Profit Share Trust scheme are referred to in that scheme which does not form part of the terms of this agreement. If any payments are due under that scheme they will be dealt with separately.

9.6 There is no requirement for the company to give you notice of termination:

a) If you are a casual employee; or
b) If you are employed on a fixed term or fixed task basis; or
c) Where there are grounds that justify your summary termination.

10. ANNUAL LEAVE

Entitlement and accrual

10.1 If you are a full time or part time employee, then for every 4 weeks of continuous service, you will accrue annual leave of 1/13 of the number of ordinary hours you worked for us during that 4-week period.

10.2 Annual leave is cumulative from year to year.

10.3 Annual leave will be paid at the ordinary rate of pay that you are receiving immediately before taking the leave. For salaried employees this will be calculated by dividing your annual salary by 52 weeks to arrive at a weekly rate and then by dividing that figure by your ordinary weekly working hours (38) to arrive at an hourly rate.

10.4 You need company approval to take annual leave but the company will not unreasonably refuse a request to take annual leave. When considering whether or not to agree to the taking of annual leave the company will have regard for peak trading periods during which time annual leave will not be granted unless you demonstrate that your particular circumstances make the granting of annual leave reasonable.

10.5 You may be required to take annual leave during a particular period if:

a) You are directed to by the company because we shut down the business, or part of it where you work for a period; and
b) You have the necessary annual leave balance.

10.6 The company may direct you to take annual leave at a particular time if:

a) You have annual leave credits of at least 1/13 of the number of ordinary hours that you worked for the company during the period 2 years immediately before the direction is given; and
b) The company directs you to take no more than ¼ of your accrued annual leave at the time the direction is given.

10.7 If your employment is terminated, then you will be paid in respect of any accrued, but untaken annual leave at the ordinary rate of pay that you were receiving immediately prior to the termination.

10.8 With the written agreement of Spotlight, after one year of service you may request to be paid up to 50% of annual leave accrued as a lump sum payment (at the rate as prescribed in this clause) in lieu of annual leave, provided that you can not cash out more than 2 weeks in each 12 month period. An application for cashing out leave must be requested through your store manager and the appropriate annual leave agreement signed.

10.9 This provision modifies and excludes any protected award conditions that may otherwise have applied to your employment in relation to and/or incidental to, and/or any machinery provisions with respect to, annual leave loadings.

11. PERSONAL LEAVE

Entitlement and accrual

11.1 Personal leave means:

a) Paid leave taken by you because of your personal illness, or injury ('sick leave'); and

b) Paid or unpaid leave taken by you to provide care and support to a member of your immediate family, or immediate household ('carer's leave') who requires care or support because of:

i. A personal illness or injury affecting the person; or
ii. An unexpected emergency affecting the person.

11.2 If you are a full-time or part-time employee, you will accrue an amount of paid personal leave for each completed 4 weeks of continuous service with the company, of 1/26 of the number of ordinary hours that you worked for the company during that 4 week period. In any 12-month period you may take paid personal leave up to a total of 1/26 of the ordinary hours you worked for the company during that 12-month period.

11.3 If you take paid personal leave, then you will be paid for the amount that you would have reasonably been expected to be paid by the company as if you had worked that period.

11.4 You will not be entitled to receive paid sick leave for an injury or illness for which you are receiving compensation relating to workers compensation.

11.5 If you are a casual employee or you do not have any paid carer's leave accrued, you are entitled to a period of up to 2 days unpaid carer's leave on each occasion referred to in clause 11.1(b).

11.6 To be entitled to paid sick leave, you must as soon as you reasonably can:

a) Give the company notice that you will be absent from work because of a personal injury or illness, the nature of the injury or illness, and the length of time that you expect you will absent for; and

b) Provide the company with a medical certificate stating that in the medical practitioner's opinion, you were, are, or will be, unfit for work during the period because of a personal injury or illness. For absences of 2 days or longer the employee will be required to provide a valid medical certificate covering the entire period of the absence. However, the Company reserves the right to require a medical certificate in respect of absences of less than 2 days duration.

11.7 The requirements contained within clause 11.6 of this agreement will not apply if you are unable to comply with these requirements because of circumstances beyond your control.

11.8 Provided you have sufficient accrued personal leave, you are entitled to take 10 days of carers leave in each year. Any such leave taken shall be deducted from your accumulated personal

leave entitlements. Carers leave that is not taken in a year will not carry over to the next year, but will not be deducted from your overall accrued personal leave entitlement which will continue to accumulate from year to year.

11.9 To be entitled to paid carer's leave, you must, as soon as you reasonably can:

a) Give the company notice that you require carer's leave, and the length of time that you expect you will absent for; and

b) Where the leave is necessary for you to provide care and support to a member of your immediate family or household because of their illness or injury, give the company a medical certificate stating that in the medical practitioner's opinion, the person required care or support due to an injury or illness during the relevant period; and

11.10 Where the leave is necessary for you to provide care and support to a member of your immediate family or household because of an unexpected emergency affecting the person, give the company a statutory declaration from you which states that you required carer's leave during the relevant period to provide care and support to a member of your immediate family or household because of an unexpected emergency affecting the person.

12. COMPASSIONATE LEAVE

12.1 Compassionate leave is paid leave which can be taken by you:

a) For the purpose of spending time with a member of your immediate family or household who has a personal injury or illness that poses a serious threat to his or her life; or

b) After the death of a member of your immediate family or household

12.2 You will be entitled to 2 days of compassionate leave on each occasion that a member of your immediate family or household:

a) Contracts a personal illness or injury that poses a serious threat to that person's life; or

b) Dies

12.3 You will not be entitled to compassionate leave if you fail to provide the company with evidence of your entitlement if we require it of you

12.4 Compassionate leave is paid at the amount that would have reasonably expected to be paid had you worked during that period.

13. PARENTAL LEAVE

13.1 You are entitled to receive parental leave in accordance with the Part VA of Division 6 of the Workplace Relations Amendment (WorkChoices) Act 2006.

14. LONG SERVICE LEAVE

14.1 You shall be entitled to long service leave in accordance with the provisions of the Long Service Leave legislation applicable to the State or Territory in which you are employed.

15. HOLIDAYS

15.1 Public holidays mean:
a. 1st January (New Years Day);
b. 26th January (Australia Day);
c. Good Friday;
d. Easter Monday;
e. 25th April (ANZAC Day);
f. 25th December (Christmas Day);
g. 26th December (Boxing Day);
h. Any additional days that are gazetted or proclaimed for the area in which you are employed.

15.2 Subject to the provisions of sections 170AE, 170AF and 170AG of the Workplace Relations Amendment (Work Choices) Act 2005 you may be required to work on a public holiday.

15.3 The above holidays shall be observed on the day upon which they actually fall, and not any other substituted day.

15.4 If you are a full-time or part-time employee and you are not required to work on a day solely because it is a public holiday then you shall be paid as if you worked on that day.

15.5 If you work on a public holiday, you shall be paid at your base rate of pay for all hours worked on that day. Full time and part time employees who work on the public holiday will also be entitled to a paid day off, to a maximum of 8 hours, to be taken at a time agreed to between your and Spotlight.

15.6 This provision modifies and excludes any protected award conditions that may otherwise have applied to your employment in relation to and/or incidental to, and/or any machinery provisions with respect to, public holidays, including provisions related to, incidental to and/or machinery provisions with respect to substitution of other days for public holidays.

16. ALLOWANCES & TRAVEL COSTS

16.1 You will be paid 46 cents per kilometre if you are required by Spotlight to use your vehicle for work purposes in the metropolitan or surrounding areas. Note this does not include travel to and from your place of work

16.2 Spotlight will reimburse you for reasonable costs associated with any authorised travel outside the metropolitan area.

16.3 This provision modifies and excludes any protected award conditions that may otherwise have applied to your employment in relation to and/or incidental to, and/or any machinery provisions with respect to, allowances including, but not limited to, expenses incurred in the course of employment, responsibilities or skills that are not taken into account in rates of pay and/or disabilities associated with the performance of particular tasks or work in particular conditions or locations.

17. DISPUTE SETTLEMENT PROCEDURE

17.1 In relation to any matter that may be in dispute between the parties to this AWA (**"the matter"**), the parties will attempt to resolve the matter at the workplace level, including, but not limited to:

17.1.1 the employee and his or her supervisor meeting and conferring on the matter; and
17.1.2 if the matter is not resolved at such a meeting, the parties arranging further discussions involving more senior levels of management (as appropriate); and
17.1.3 acknowledge the right of either party to appoint, in writing, another person to act on behalf of the party in relation to resolving the matter at the workplace level; and

17.1.4 agree to allow either party to refer the matter to mediation if the matter cannot be resolved at the workplace level; and

17.1.5 agree that if either party refers the matter to mediation, both parties will participate in the mediation process in good faith; and

17.1.6 acknowledge the right of either party to appoint, in writing, another person to act on behalf of the party in relation to the mediation process; and

17.1.7 agree that during the time when the parties attempt to resolve the matter:

(i) the parties continue to work in accordance with their contract of employment unless the employee has a reasonable concern about an imminent risk to his or her health or safety; and

(ii) subject to relevant provisions of any State or Territory occupational health and safety law, even if the employee has a reasonable concern about an imminent risk to his or her health or safety, the employee must not unreasonably fail to comply with a direction by his or her employer to perform other available work. whether at the same workplace or another workplace, that is safe and appropriat for the employee to perform; and

(iii) the parties must cooperate to ensure that the dispute resolution procedures are carried out as quickly as is reasonably possible; and

18. STANDDOWN

18.1 Spotlight may stand down an employee without pay for any day or part of a day for which the employee cannot be usefully employed because of any strike, breakdown of machinery or any stoppage of work for any cause for which Spotlight cannot be reasonably held responsible or over which Spotlight has no control. This does not break the continuity of employment for the purpose of entitlements.

19. CONFIDENTIALITY

19.1 In the course of your employment you will acquire and have access to confidential information. Such information means information, whether in written, verbal or electronic form, that is proprietary or non public information or of a commercially sensitive nature concerning Spotlight's business or operations and includes, but is not limited to information about Spotlight's clients and suppliers; details of negotiations of past, current and future transactions; financial, marketing, administrative and personnel information; procedures, programs and technical information unique to or developed by or for Spotlight; and know-how, trade secrets, reports, plans, proposals or other like information.

19.2 You must not, at any time during or after your employment, disclose such confidential information to any person or corporation, unless such disclosure is authorised by Spotlight or required by law.

19.3 You must not, at any time during or after your employment, use such confidential information for personal gain or to the detriment or likely detriment of Spotlight.

19.4 Nothing in this agreement operates to prohibit or restrict you disclosing the details of the Agreement

20. APPLICATION OF AGREEMENT

20.1 This agreement is intended to cover all terms of your employment with Spotlight and it is not intended to be read in conjunction with any other agreement, award or industrial instrument.

20.2 The provisions of this agreement shall be read to expressly exclude the operation of all protected award conditions and/or protected notional conditions that would otherwise have applied to your employment. For the avoidance of doubt, this agreement expressly excludes the operation of protected award and/or notional conditions in relation to, incidental to and/or machinery provisions with respect to:

a) rest breaks;

b) incentive-based payments and bonuses;

c) annual leave loading;

d) public holidays, including provisions related to substitution of other days for public holidays;

e) monetary allowances for:
- expenses incurred in the course of employment;
- responsibilities or skills that are not taken into account in rates of pay for employees;
- disabilities associated with the performance of particular tasks or work in particular conditions or locations;

f) loadings for working overtime or shift work;

g) penalty rates, including for work on Public Holidays;

h) outworker conditions.

SCHEDULE ONE

SECTION A – EMPLOYEE COMMENCEMENT DETAILS

1. Employee name:

Complete using BLOCK CAPITALS

First name		Family name	

2. Employee Status

☑ against status. For part-time enter minimum contract hours per week.

Full Time			
Part Time		Contract hours per week	
Casual			

3. Fixed Term Employee/Specified task

☑ against status. For part-time enter minimum contract hours per week
Enter completion date of agreement.
Termination form required at completion of fixed term

Full Time			
Part Time		Contract hours per week	
Casual			
From	Commencement Date	To	...../...../.....

4. Store Location: ***(ie store name)***

5.Commencement date

If no date specified, on date in accordance with clause 2.1 (b) or 2.1 (c) of this Agreement.	...../...../.....

6. Expiry of Probationary period

Six (6) months from date of commencement	...../...../.....

7.Position

Sales Assistant		Despatch/Sales Assistant	

8. Main Duties and responsibilities

Indicative tasks are: sales and service, receipt of stock, ordering, display and merchandising, participation in training activities.

SECTION B – SIGNATURES - All sections MUST be completed.

Employee

Signed: _____

Date: _____

Name in full (printed) _____

Employee Address _____

_____

For Spotlight Stores Pty Ltd

Signed: _____

Date: _____

Name in full (printed) _____

Position: _____

Store Address: _____

Witnessed by:

For the employee

Witness cannot be a Spotlight manager

Signed: _____

Date: _____

Witness name in full (printed) _____

Witness Address _____

For Spotlight Stores Pty Ltd

Signed: _____

Date: _____

Witness name in full (printed) _____

Witness Address: _____

Parent / Guardian Consent (only use if employee is under 18 years):

Employee's Parent / Guardian

(Cannot be Spotlight employee)

I consent to the employee making this agreement

Signed: _____

Date: _____

Name in full (printed) _____

Address _____

Witness for Parent/Guardian

Signed: _____

Date: _____

Witness name in full (printed) _____

Witness Address: _____

Waiver of Time Requirements

The Workplace Relations Act provides that you must have an AWA at least 7 days prior to the agreement being signed.

However, you can sign the agreement earlier provided that you formally waive the notice requirement.

If, having read this agreement, you wish to waive the 7 day requirement and sign the AWA earlier you must sign the following.

Employee Waiver

In accordance with Section 98A of the Workplace Relations Act I waiver the 7 day time requirement.

Employee - Full Name	
Employee signature	
Date of signature	...../...../.....

SCHEDULE TWO – RATES OF PAY

SCHEDULE TWO – RATES OF PAY

ADULT EMPLOYEES

Indicative tasks:- Sales and service, stock receipt, display, racking, merchandising, participation in training activities.

Per hour
$.....

Refer recruiting guidelines for rates per state. Any variation form this rate requires authorisation of Regional manager or Operations manager

24th May 2006

To Whom it may Concern.

I, Annette Harris, of [redacted]

an employee of Spotlight Pty Ltd, Coff Harbour, confirm that I was offered an A.W.A, on Monday 22nd May, 2006.

The A.W.A, contained no hourly rate of pay. I quired my manager as to what hourly rate of pay was offered, in conjunction with the A.W.A, my manager advised that the hourly rate of pay was to be $14-30 per hour.

Signed Q. Harris. 24th May 2006.

ANNETTE HARRIS

[redacted]