

# The AWA Experience at D&S Concreting

*A report produced for the*

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*Prepared by*

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## Executive Summary

This is a case study of the making, content and operation of Australian Workplace Agreements (AWAs) in a small, dynamic concreting business (D&S concreting) in the Illawarra region. D&S employs a full-time workforce with a cross-section of skill profiles from relatively skilled 'finishers' through to unskilled labourers. The work process is highly flexible with few demarcations and the use of teamwork. Both managers and employees viewed the workplace culture positively as relatively open with good communication. D&S operates as a non-union worksite.

AWAs were introduced at the initiative of the owner primarily in response to an approach by the Construction, Forestry, Mining and Energy Union (CFMEU) about alleged award breaches, which the owner believed was part of a general recruitment drive in the Illawarra region. Previously, there were no formal agreements in place and D&S operated under the Plant Operators on Construction (State) Consolidated Award. Additional overaward payments were made at the discretion of the management.

In addition to the objective of 'keeping the union out' AWAs were expected to simplify the wage payment system and reduce absenteeism through an incentive scheme. D&S's employees were largely supportive of the employers wish to use AWAs as a means of keeping the workplace non-unionised.

D&S chose AWAs after consulting with the Housing Industry Association (HIA). An agreement was drafted using model clauses developed by the HIA. The agreements were presented to the employees at a meeting followed by one-on-one meetings between the owner and each employee to discuss the AWAs.

Employees were, on-the-whole, satisfied with the agreement. Many workers interviewed, did however indicate that they felt that they did not have any real opportunity to negotiate their own terms or conditions. The agreement had already been drafted by management and workers felt they had little choice but to sign. Despite this perception, employee feedback on the draft did result in management making changes to the proposed sick leave provision.

The major change in the AWA was a simplified wage payment system from the existing award based system. This was achieved by:

- Cashing out crib, travel and industry allowances into a 'concreters' allowance' which is set as a proportion of base pay, based on the employee's skills and productivity.
- Changing overtime penalty rates to double time after three hours instead of after two hours as specified by the award, offset by a higher base rate of pay
- In addition, an incentive scheme was introduced to reduce absenteeism.

Employees on AWAs are currently paid above the award rate. Our analysis concluded that had employees remained on the award, and if the proportion of over-award to award rate had been maintained, then most workers would have been financially better off because of subsequent adjustments to the minimum award rate. It is unknown, however, whether the over-award component would have, in part, been absorbed with increases in the award rate.

As mentioned, the agreements were introduced as a reaction to keep the site non-union. It is largely for this reason that the agreements do not contain provisions which radically alter the way in which work is done at D&S. In general therefore the AWAs do not appear to have had a major impact at D&S. While the new payment system has brought with it some administrative benefits and savings for management there have been no improvements in workplace productivity, absenteeism, efficiency or workplace culture since the introduction of AWAs. Most employees were satisfied with the AWAs and considered the owner a 'fair boss'. A view that reflects the positive workplace culture which already existed at D&S.

The experience of D&S Concreting and its employees demonstrates that AWAs may be effective in small workplaces where there is a relatively open, high-trust relationship between managers and employees.

## Introduction

The case study in this report is one of a number commissioned by the Office of the Employment Advocate (OEA) in 1999 as part of its evaluation of the operation of Australian Workplace Agreements (AWAs). The purpose of this evaluation is to analyse how AWAs are made and implemented at the workplace, including the experiences of employers and employees.

Specifically the tender brief requires us to examine the following issues:

- Previous coverage arrangements
  - Why the parties chose AWAs and how employment conditions were determined prior to AWAs
- How AWAs were developed, including
  - The role of bargaining agents and/or business advisers
  - The extent of employee involvement and methods of consultation with employees
- The content of AWAs and their effect
- How the experience and outcomes of making AWAs compares with the parties' original expectations
- The extent to which the AWAs incorporated measures to improve work and management practices, and/or to assist employees to balance work and family responsibilities
- The ongoing operation of AWAs, including
  - their impact on workers in a disadvantaged bargaining position, particularly women, outworkers, young people, apprentices and trainees
  - their effect on the employee/employer relationships
  - operation of dispute resolution procedures
  - the parties' assessment of the process and outcomes of making AWAs

## **Background**

D&S Concreting (hereafter D&S) is a small family owned and run proprietary limited business formed in 1980. It is located near Wollongong on the South Coast of NSW and provides concreting services to building sites in the Illawarra area. The majority of its business is in the area of domestic housing with industrial construction concreting work being undertaken on some occasions. Approximately 90 per cent of its work is concentrated on project homes. D&S has a contract with the home building developer AV Jennings that provides it with most of its ongoing work. This contract has existed for several years.

The organisation has been in its present location for 4 years. The premises were built and are owned by D&S. The company has experienced significant growth in work over this time. While D&S's focus is mainly around the Illawarra area it reaches as far as the Southern Highlands. The owner has no short term interest in moving into the Sydney building market as he considers this to be highly competitive and too far from the D&S site.

The owner of D&S has worked in concreting all his working life following a family involvement in the industry. The business became incorporated in 1996. Recently the concrete pumping activities of D&S have been moved to a new company because the owner felt that D&S was "getting too big". This new company is a completely separate business from D&S Concreting. Two workers from D&S and the two pumping machines have been transferred to the new business entity.

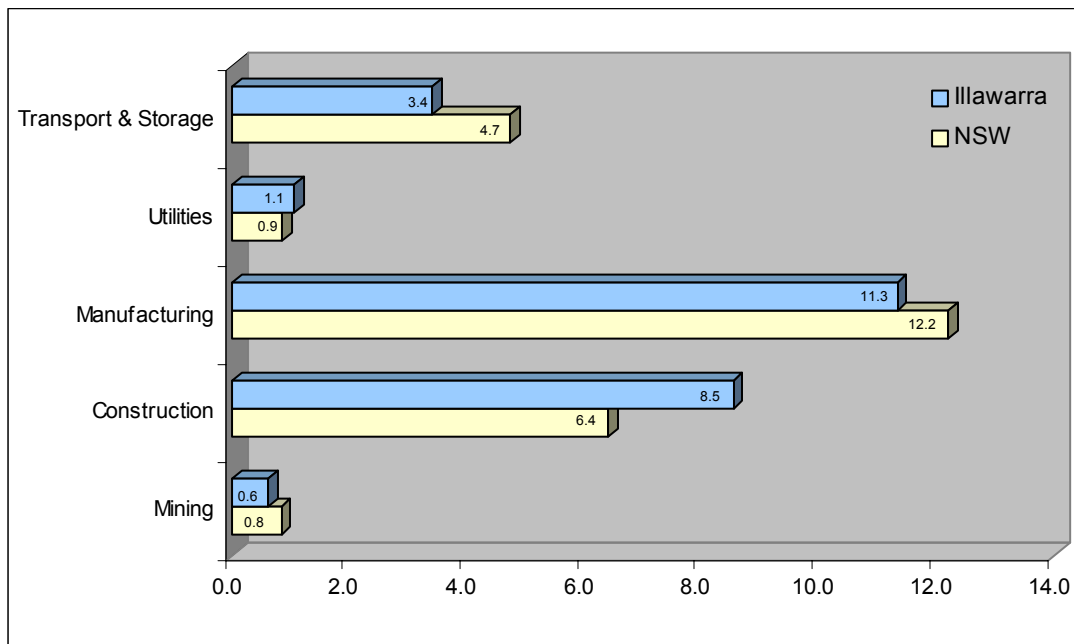
### ***The construction industry in the Illawarra region***

The construction and manufacturing industries clearly play a significant role as employment providers in the district (see Figure 1). In 1996 the construction industry accounted for approximately 9 per cent of employment in the region, compared to less than 7 per cent across NSW.

Within the construction industry, the majority of work in the Illawarra is housing construction. To the end of December 1998, building approvals in the Illawarra increased at a higher proportion than NSW generally (5.2% and 3.4% respectively). This is reflected by the resultant growth in business experienced by D&S during this time. In contrast the value of approved building applications for non-residential building construction decreased by an average of over 50 per cent in 1998, compared to 1997.



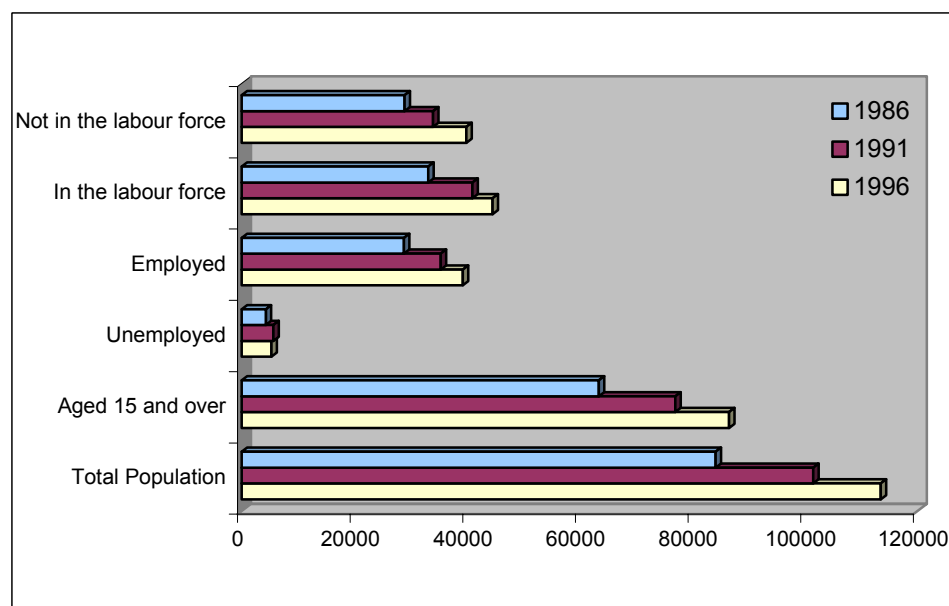
**Figure 1: Percentage share of total industry, by number employed, Illawarra and NSW, 1996**



Source: Census Data 1996, ABS, C-Lib

The Illawarra region experienced steady employment growth between 1986 and 1996 (see Figure 2). During this period, the population grew by approximately 30,000 people, with corresponding growth in the labour force and in employment. Interestingly, over the same period, and despite having one of the highest unemployment rates for youth in NSW, total unemployment for the region has decreased.

**Figure 2: Selected characteristics of the Illawarra labour market**



Source: Census Data 1986, 1991, 1996, ABS, C-Lib

Small business employs a large proportion of Illawarra's labour force. In February 1996, businesses with less than 20 employees employed 55 per cent of the workforce in the Illawarra. However, the proportion employed in small business in the Illawarra is lower than the all Australia average.<sup>1</sup> In fact, net employment fell in the small business sector in 1996. In 1996, most of the employment growth in the small business sector of the Illawarra occurred among the tertiary sector. Small business is generally considered a volatile sector of employment, where downturns in the business cycle are more likely to affect employment levels.<sup>2</sup>

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<sup>1</sup> Markey R, Hodgkinson A, Murray M, Mylett T, and Pomfret S (1997) *Employment Practices in the Small Business Sector in the Illawarra: A Report from the Labour Market and Regional Studies Centre*, University of Wollongong, December, p.1.

<sup>2</sup> op cit, p.1.

## The D&S Case Study

### ***Profile of the workforce at D&S***

D&S currently employs eighteen (18) people, all of whom are full-time. D&S has not employed casuals, to date, because of the strict award restrictions which apply to these workers. For example, the owner noted that casuals can only be employed for five days and are considered permanent after this.

Sixteen of D&S's eighteen employees are field workers and two are administration staff. Occupations of the field workers range from Labourers, Floaters, Plant Operators, and Concrete Finishers. In April 1999, there were seven (7) Labourers, two (2) Floaters and seven (7) Finishers. All field workers are male and from an English speaking background. Years of service for workers at D&S ranged from 1 month to 9 years. The longer serving employees were in skilled classifications such as Finisher and Plant Operator. Labourers and Floaters were more likely to have shorter tenure and traditionally turnover amongst these occupations is relatively high.

Labourers at D&S provide general labouring assistance with the concreting process and some also assist with the formwork. Formwork involves setting up the structure of the base timbers for cement pouring. Floaters assist with setting up the formwork and also with certain aspects of the finishing process. The role of a Floater is defined in the award as *“an employee engaged in concrete or cement work and using a wooden or rubber screeder or mechanical trowel or wooden float or engaging in bagging off or broom finishing or patching”*. The role of the Floater is distinct from a Labourer because they assist the Concrete Finisher and must also hold some of the skills associated with concrete finishing. Plant Operators operate the machinery such as the concrete pump and the backhoe. The Concrete Finisher's role mainly focuses around the laying of concrete. A Concrete Finisher is defined in the award as *“an employee other than a Concrete Floater engaged in the finishing of concrete or cement work by hand not being a finish in marble, mosaic or terrazzo”*. The Concrete Finisher's duties also include general labouring, formwork and finishing. Flexibility is seen as a key aspect across all occupations and work practices at D&S where no formal demarcations of duties exist.

One Foreman is responsible for all these workers. The Foreman's role was created to alleviate the pressure on the owner who was trying to juggle the running of the business and managing employees – especially when the business was experiencing strong growth. The Foreman allocates the workers to the contract jobs and supervises them on the job. The Foreman was initially employed as one of the field staff and has a sound knowledge of the whole concreting process. Flexibility therefore also extends to the Foreman who provides assistance to other workers on the job.

The Foreman is not covered by an AWA and has a common law agreement between himself and the owner, which is also signed by the owner's solicitor. The relationship between the Foreman and the owner is *“a good and open one”*.

### ***Skills and educational background***

Labourers require no formal skills. For some Labourers, this is their first full-time job and they had little work experience prior to their job with D&S. Other Labourers held similar 'labouring' positions with other companies but not necessarily in the concreting industry. For example, previous occupations amongst Labourers

included: landscape gardening, fishing, Fitter's assistant, swimming pool paving and working as a building contractor.

Previous experience in the concreting industry was more likely amongst the higher skilled workers who had worked as concreters for another company or on a self-employed basis as a concreter. Currently, only one Labourer is attending a 2 year TAFE course for a certificate in Residential Studies, however this was not employer driven and is because of his interest in the area.

The majority of the field staff hold basic levels of school education. According to the Foreman, "It is the nature of the industry - you need to be hardworking and not mind working outdoors when it is cold and rainy. For that type of work you do not need high calibre people like you might need elsewhere". However he did note that the labour used at D&S is slightly specialised so it is a little more complex than hiring someone "off the street". It therefore becomes difficult to find the right worker with the skills and the ability to perform the job. On several occasions, the Foreman found that prospective workers had overstated their skills and ability – something that became apparent once they were on the job. D&S relies on teamwork and each worker is expected to provide quality work. Team workers depend on each other's efforts. Therefore work quality is a very important ingredient both in terms of efficiency (ie. time spent on the job) and in producing a final product that is "up to scratch".

### **Workplace culture**

Most workers indicated that they enjoyed working at D&S. It is an open working environment where management are seen as approachable. Most workers felt comfortable discussing work related issues openly and directly with management. As one worker stated while making comparisons with his previous job

*"People are easy going. Everyone gets along well at D&S, especially compared to my previous job. Workers can talk to the bosses better and it is a good working environment. The work I am doing here is similar to my job at [previous employer] but the bosses are better ... You can actually approach them." (Plant Operator)*

Another worker noted that *"people like the easy way. Not many people go out of their way to make it easier for others. But generally, workers tended to stick up for each other and do not do each other to the boss"*.

Work is team based and there is a high level of interaction on the job between workers. However, there is some tension between workers of different classifications such as Labourers and Finishers. For example, at times during the construction of the formwork the Labourers bang the pegs into the ground so hard that it is difficult for the Finishers to remove them when the job is complete.

When asked if they would like to see any changes or improvements at D&S, most respondents generally could not think of any need for changes. One worker, however, stated that he would like to see a change in the mentality of the workers. Some workers tend to overestimate their capability on the job and are slack. This wastes a lot of time on the job because other workers only find out their limits and attitude whilst on the job. The end result usually means that some workers choose not to work with others on particular jobs. This view was confirmed by another worker:

*“If they are slack they are given the really shitty jobs. If you work hard you are given the good jobs. If you are known to be a bludger then you will be teamed up with a really hard worker who will make you work hard”.*

While the manager believes there are one or two union members at D&S, there had never been any active union involvement at D&S. Effectively it has operated as a non-union worksite.

## **AWAs at D&S**

The introduction of AWAs at D&S was clearly summed up by the owner:

*“The AWA secured everything - the employees were more apprehensive of the union than the AWAs... You know where you stand as an employer and an employee. The blokes would not even know what the award looked like, but now they are aware of some of their conditions”.*

D&S was previously covered by two NSW awards:

- Plant Operators on Construction (State) Consolidated Award, and
- Plant Operators on Construction (1994) Wages Adjustment Consolidated Award.

In addition to the awards, informal arrangements operated at this workplace prior to the introduction of AWAs. Employees were also paid over the award rate according to their level of skill and experience.

D&S had no formal written agreements in place before AWAs, relying solely on the Award and overaward pay as determined by management. As a result, neither management nor any employees had experience in making formal agreements until management decided to seek an AWA.

The initiative to move to AWAs came from the owner. His interest was a direct result of attempts by the CFMEU to organise in the Illawarra by picking a number of workplaces and inspecting their wages books for breaches of the award. According to the owner, this was used as part of a member recruiting strategy by the union. The union had also approached D&S with a proposed enterprise agreement (certified) which it offered to a number of construction employers in the region. However, according to the owner

*“...the conditions in it were killers. There was about \$100 per week in uniforms for the blokes – they would have been the best dressed concreters in the business but they would have had less money in their pockets”.*

In short the owner considered that AWAs would minimise the opportunity of the union “to make trouble” in the future. The owner believed that most D&S workers had little or no interest in or involvement with unions. While this was the primary motivation for entering into AWAs at D&S there was also some expectation that new provisions in the AWAs may also reduce absenteeism levels. An incentive was introduced where if any five days out of the ten days per year sick leave entitlement were not used during the year, they would be paid out. Another expectation was that AWAs would introduce a less complex system of wage administration than under the award

system. The owner found it difficult and time consuming to calculate allowances according to all the different sites and hours worked each week.

Before D&S implemented AWAs informal agreements and work practices were in place which may have been in technical breach of the Award. For example, employees were not always given their set rostered day off each month. On several occasions, D&S used RDOs as days for employees to take when it was raining or they had to work in the yard making pegs. Certain allowances were also not paid, such as the 17.5% leave loading under the award. In the view of the owner, because of the over-awards being paid, workers were still better off than if all the allowances they were entitled to had been paid and the minimum award rate of pay specified in the award was adhered to.

It was these technical breaches of the award that brought the CFMEU to D&S. The owner believed that D&S was targeted as part of a wider organising campaign in the region that the union was engaged in. The Union had requested to inspect the pay records for workers a number of times and used the inspection to demonstrate to the workers the allowances to which they were entitled but had not been paid.

The union's campaign was not well received by most employees. Most felt that they were paid fairly, given the level of overawards, even if not strictly in accordance with all the award entitlements. Some reflected the owner's view of the union's initiative:

*'We knew that if we didn't sign the AWA that it would open up an opportunity for the union to become involved. We were worried about this because of the pressures the union would place on the business. If the union did get involved it would put pressure on [the owner] to pay everything according to the award and the business might close and we would lose our jobs.'* (Labourer)

The AWA, according to the owner, also simplified the calculation and payment of wages. It provided for an all-in allowance making it easier for management to calculate employee entitlements each week. Finally it formalised other employment conditions which were not provided under the award.

### ***Business objectives and the AWA***

D&S has no formal written business objectives, however, informally, one of the key objectives in negotiating AWAs at D&S was to avoid attempts by the union to recruit new members at the workplace.

The formal business objectives as stated in the "aims" section of the AWAs that operate at D&S are to:

- 1. 'document employment conditions in a way that is simple and easy to understand;*
- 2. provide employment conditions that are flexible so as to accommodate the needs of us, our employees and our clients;*
- 3. establish a framework to further develop and enhance our efficiency and effectiveness; and*
- 4. provide improved pay and conditions for the employees'.*

The aims stated in the D&S AWA similarly resembled the pro-forma AWA provided by the Housing Industry Association (HIA), the employer association used by D&S for advice.

### **Choosing AWAs**

AWAs were chosen by the owner of D&S after consultation with the HIA, of which they are a member. The HIA recommended that an AWA would best suit the business needs of the organisation. The Association suggested that AWAs would formalise existing employment arrangements thereby reducing the likelihood of the union approaching the organisation to inspect its wages records. Other agreement options (such as a non-union certified agreement) were not suggested by HIA to D&S.

The HIA believes that AWAs are only suitable for employers who are incorporated, and who work in the smaller end of the construction industry, which is generally non-unionised. It is this end of the market which D&S predominantly occupies. Contracts for the larger sites typically require that those working under contract on the site will comply with a number of conditions. One of these is that the employees of contractors work under the enterprise agreement which has been negotiated to cover all workers on that site for the duration of the project. Smaller companies which tender for work on these large sites have to comply with these conditions. Smaller companies which operate under an enterprise agreement while performing work on larger sites would not necessarily be able to afford the wages specified under a 'large site agreement' when they fell back to the smaller end of the construction industry.

The HIA suggested therefore “...that companies need to give a great deal of thought to the type of work they will be doing during the life of the agreement before choosing an agreement type.” The type of agreement chosen will impact on the type of work the organisation will be 'allowed' to do. For example, the owner believes that D&S has lost work on larger sites because the union is aware that employees are covered by AWAs and therefore will not allow them on a unionised site.

In hindsight, the HIA believes it would not recommend the use of AWAs for organisations the size of D&S which are also known to have high levels of employee turnover.

*“They would be better off negotiating a non-union certified agreement because each time a new worker was employed they would automatically fall under the agreement as opposed to having to get an new AWA approved each time a new employee commences work.”*

Indeed one of the main complaints D&S management have with AWAs is that the administrative burden is high and they did not anticipate that they would need a new agreement approved for each new employee. They thought that employees automatically fell under the AWA when they signed the agreement and, because it had already been approved by the OEA initially, that they did not have to get it approved again.

*“Every time you start a new bloke you have to go through the process again and start a new agreement. It takes ages. A guy starts on one month probation and then is given the AWA and then the AWA has to be approved. It is a problem that you must give an employee who has been on probation 14 days to sign the agreement as opposed to five days if they had just started their employment. We can't start them on the agreement*

*because they are on probation. The 14 days however is not the big problem, it is the actual approval process. Why can't you get an agreement approved once by the OEA and then each time a new guys starts then you just get them to sign the agreement and file it here?" (owner).*

### **The process of introducing AWAs**

The AWAs were developed from model clauses provided by the Employer Association (HIA). The owner developed the content of the agreements based on these clauses and without external assistance. A draft of the proposed AWA was taken to a meeting of all employees where he explained his intention of moving workers from the award and to AWAs. All employees were asked to read the agreement and show it to whoever they wanted but not to talk about it amongst themselves. If they had a question they were to direct it to either the owner or foreman.

*"I had a choice whether to sign the AWA – If you said that you did not want to though, management would have sat down with you to find out why you wouldn't sign it and what would be needed to get you to sign the AWA." (Labourer)*

Each employee then had an individual meeting with the owner to discuss the AWA. The Foreman was present at each meeting as a witness.

Employees signed the AWAs and were told what percentage of the concreters allowance they would be paid. The percentage allowance itself was not negotiated. *"Danny called people into the office one by one and told them what allowance and rate they were entitled to." (Finisher)*

Although some employees felt that they could ask questions freely in this meeting, others did not. Generally those workers who had recently joined the company did not feel confident enough to ask questions. Similarly, new employees who signed an AWA at a later date felt that there was no point in negotiating over the terms and conditions in the AWAs because these conditions already covered existing D&S workers and new employees would "have no chance of changing these". In general employees did not feel that they could negotiate their own terms and conditions, especially if they were a prospective employee who was on probation.

*"They class the AWA as an agreement but you more or less had to sign it unless you didn't want to work. I read through the agreement and didn't see anything that looked bad in it, but you were really held over a barrel because you had to sign it to work. I didn't feel that I could ask questions about the agreement and think that a lot of blokes felt the same way – what is the point of asking questions when the agreement had been decided already? It can't be called an agreement when if you don't sign it you don't work." (Floater)*

However, a number of employees did raise questions after being given the draft copy of the AWA to sign. The majority of queries related to the proposed overtime provisions and sick leave. The company proposed to increase the number of overtime hours to be worked before double time was payable from two hours at time and a half to three hours at time and a half. Employees raised this as an issue and claimed that they often worked up to three hours during overtime. The proposed changes to overtime would mean that the workers would not qualify for double time until three hours had been worked. Despite their efforts to raise this as an issue of



concern, this proposal remained as a new condition. Employees now work three hours at time and a half and double time thereafter as opposed to two.

The sick leave provision concerning Doctors' certificates as set out in the draft AWA was also changed as a result of concerns expressed by employees. It was agreed that medical certificates would be required after two consecutive sick days not one as originally proposed.

Some employees indicated that they thought the content of the agreement was acceptable but had no clear understanding of their entitlements under the award and how the AWAs differed. Although management reported that relevant awards were available for employees to look at, they had not actively alerted employees to the awards' existence and their availability for scanning.

Management did not explain the differences between what employees were entitled to under the award and what they would receive under the proposed agreement. The onus of making comparisons between award and AWA conditions and entitlements was on the employees. In general they did not try to do so as they lacked the skills to analyse an award, and identifying differences and making comparisons would have been even more difficult. Some employees indicated that they would have if they had known where the information could be found.

No employee reported using a bargaining agent or showing the AWA to a solicitor, union or other professional. However, the majority did report that they had shown it to their partner and discussed it with them at home. This suggests there is the need for some form of independent agency which can provide assistance to workers, particularly those who are not members of a trade union.

Management did not rely on any external assistance in drafting the agreements besides the original guidance from the HIA. After the agreement was drafted the owner sent a copy to the HIA for comment but also to clarify whether the content was acceptable. The HIA made a number of small suggestions and then this draft was sent out to employees. It is not clear from our interviews whether the final copy of the agreement was given to employees with a fourteen day period after it was reviewed by the HIA. It is therefore possible that the final changes were completed during this fourteen day embargo period.

Employees at D&S had no role in the development of the AWA, and is not a jointly negotiated or drafted agreement. The entire agreement was drafted by the owner based on the information he had received from the employer association. Employee input occurred only after they had been given the draft agreement for comment. The only change made to the agreement after it had been drafted was to the proposed sick leave clause relating to the provision of a Doctor's certificate.

*"One provision I didn't agree with in the draft agreement was that sick leave was initially changed so that you had to get a doctors certificate for one day absences if you were sick. Some of the blokes had picked this up and I said that I was going to speak to Danny about it and so did so for all the blokes. This was changed to two days." (Finisher)*

### **Approval Process**

During the approval process there was detailed correspondence between the OEA representative and the Office Manager, who was nominated by the owner as the

contact person at D&S Concreting. The OEA questioned the content and meaning of some sections of the AWA, specifically:

1. Differences in the concreters allowance for employees who were to be employed on the same level. D&S reported that the concreters allowance reflected the differing level of experience among employees, even those on the same level, and also reflected the different tasks employees were doing.
2. Whether the provision that employees would be paid a minimum of four hours if they were recalled in to work meant that they would be on call. Management confirmed that it only related to employees being called in and that employees were not on call.
3. Whether the travel allowance was to be paid daily (which it is) and noted that there was nothing in the agreement to this effect. The OEA also asked whether Award provisions relating to fare allowances were included in the agreement. D&S reported that they were not because those allowances related to when employees drove their own cars to work whereas D&S provided employees with cars.

Areas of possible disadvantage noted by the OEA included:

- The Award specified that employees may accrue sick leave. The AWA does not allow sick leave to be accrued, rather it allows that up to five days of the ten day annual entitlement to be paid out annually. However the OEA noted that an employee could potentially lose up to fifteen days sick leave over the term of the three (3) year agreement.
- The AWAs did not address what is to be done with sick leave which employees have already accrued. Most employees at D&S tend to use their annual sick leave entitlement, however one employee had accrued nine days for which an undertaking had to be sought from D&S management on what to do with these.
- The changes to overtime rates from double time after two hours of work to double time after three hours could potentially disadvantage employees who are paid a low concreters allowance (5%). The OEA noted that for these workers it may be necessary to get an undertaking from the employer to remove this disadvantage should it occur.
- The OEA expressed concern about the changes to redundancy provisions in the AWAs. The redundancy provisions for workers with less than four years service are potentially disadvantaged however this disadvantage is offset by the higher hourly rate of pay offered to employees.

The OEA found, however, that the AWAs met all other approval requirements:

1. The AWAs did not contain a confidentiality provision;
2. It contains the wrong anti-discrimination clause and therefore the model clause in the Workplace Relations Act was deemed to apply;
3. The AWAs contained a dispute resolution procedure;
4. Employees received a copy of the AWA 14 days before signing;

5. The employer explained the effect to the employees during the time they received the AWA and when they signed it; and,
6. Employees genuinely consented to making the AWA.

Employees reported that the OEA contacted them at home and asked whether they had been under any duress to sign the agreement. One new employee felt that he had no choice but to sign the AWA if he wanted employment. He did not feel that the AWA was an agreement that he had made but something he had to sign to get work. He did not tell this to the OEA however, because he did not want to cause trouble and wanted a job. He felt that if he told the OEA that he signed the agreement under duress, the Office would call the owner and then the owner would not employ him.

7. Where the employer did not offer the AWA on the same terms to comparable employees, written explanations were provided by the owner stating the reason (ie. because of different levels of knowledge and experience).

Overall the OEA found that it was not necessary to gain any undertakings from the employer about the content of the agreements. The AWAs were approved on 7/4/1998, three months after they had been lodged with the OEA. (They were lodged before Christmas 1997 and were signed by employees on 9/12/1997).

One of the main complaints from D&S Concreting was that the approval process had been extremely long. The manager of D&S complained (on 6/4/1998) to the OEA who undertook to speed up the process. The delay was due to a number of factors, including the number of queries about the AWAs and the lack of experience of people who initially worked on these agreements in the OEA's office.

The OEA has since streamlined the approval process for AWAs and reported that currently the majority of AWAs are approved within 20 days of filing receipts being issued.

## **Content of D&S AWAs**

The content of all AWAs at D&S are identical except for the concreters allowance which varies from agreement to agreement. The key provisions of the D&S AWAs are as follows:

- The agreement operates for three years, from April 1998. Where the agreement is silent Award conditions apply.

### *Employment*

- All employees are engaged on a full-time basis. Casuals who work more than 12 weeks in any 12 month period are deemed to be full time employees. Ordinary time hours are 38 per week with the span of hours between 6am and 4pm Monday to Friday. Employees work a 19 day month, but may bank RDOs to a maximum of ten.

### Allowances

- The agreement includes an allowance called the ‘concreters allowance’ which is a minimum percentage to be paid over the award rate. This allowance incorporates the following key award allowances: Crib, meal and industry allowances. The ‘concreters allowance’ is in place ‘...to make it simple and easy to calculate, understand and pay employees’ (owner). This allowance is calculated into all overtime, annual leave, sick leave and RDOs. The percentage overaward varies depending on the skill and experience of employees and ranges between 5% and 35% above the Award rate.
- Employees are also paid a travel allowance of \$12.00 per day. This is additional to the concreters allowance.

### Overtime

- Overtime is paid when work is carried out outside the span of ordinary hours or when more than eight hours are worked in any one day. Employees work most Saturdays and are paid time and a half for the first three hours and then double time thereafter. Work performed on Sundays is paid at double time rates, however employees don’t usually work Sundays. Time off in lieu of overtime pay is available at overtime rates, however, employees prefer to be paid and do not make use of this provision.

### Leave Provisions

- Employees are entitled to ten days sick leave during the year. In the attempt to reduce absenteeism, sick leave may be paid out at a maximum of five days per annum if no leave is taken during the year. This rate reduces by one day for each sick day taken during the year.
- Annual leave is as per the legislation with employees paid 17.5% leave loading. Employees, ‘where possible are to keep a minimum of 2 weeks leave, to be taken on the Christmas/New Year break’.
- Long service leave is statutory.
- Employees are entitled to a picnic day which will be taken on a day in December that is determined by a committee of employees but is suitable to management. All employees who attend the picnic day are paid at normal rates.

### Redundancy

- Redundancy payments are as follows:

1 year of service	2.4 weeks
2 years service	4.8 weeks
3 years service	7.0 weeks
4+ years service	8.0 weeks (capped at 8 weeks)

Employees who leave the company before one years service has been accrued are not entitled to any redundancy payment.

#### *Discrimination and Dispute Resolution*

- The discrimination and dispute resolution clauses in the AWA are the model clauses from the legislation.

#### *Probation*

- The agreement provides that new employees are hired on three months probation. In practice however, new employees are usually on probation for less than three months, long enough for the owner to determine their skill level.

#### *Wages*

- There is no provision for a wage increase during the life of the agreement.

#### ***Comparison of the award and AWA conditions***

The two tables following contain comparisons between provisions in the Award and the AWA. Table 1 contains a monetary comparison between the two, excluding overtime. It shows that Group 2 (Finishers) and Group 3 (Floaters) employees are paid above the award rate to which their AWA was compared by the OEA. However it also shows that some Group 4 employees (Labourers) rely on overtime payments to push their wage above the base rate in the award. This concern was noted by the OEA.

When the current award conditions are compared to the AWA base rate only Group 2 employees do not have to rely on overtime to remain above the award base rate. All Group 3 and Group 4 employees clearly have to rely on overtime to not be disadvantaged by signing an AWA.

**Table 1: Comparison of basic award and AWA wage rates and allowances**

Provision	Original Award	Current Award	AWA	
<b>Group 2 Employee, including Concrete Finisher</b>				
			<b>Worst Case (base rate)</b>	<b>Best Case (base rate)</b>
Rate per week (August 1997) (\$)	432.80 (38 hrs @ 11.39 p/h)	486.78 (38 hrs @12.81 p/h)	584.28 (35% above award)	608.00 (minimum of \$16.00 p/h)
Fares allowance (April 1997) (\$)	56.50 per week (\$11.30 per day)	59.00 per week (\$11.80 per day)	60.00 per week (12.00 per day)	
Special allowance (\$)	7.70 per week	7.70 per week		These allowances form part of the <i>concreters allowance</i>
Industry allowance (\$)	16.50 per week	16.50 per week		This allowance is between 0% and 35% in addition to the base rate prescribed in the Award.
Meal allowance (paid when more than 1.5 hours overtime has been worked per day) (\$)	7.30 per meal	7.80 per meal		
<b>TOTAL WEEKLY AWARD WAGE (excluding meal allowance and overtime)</b>	<b>513.50</b>	<b>569.98</b>	<b>644.28</b>	<b>668.00</b>

**Table 1: Comparison of basic award and AWA wage rates and allowances (cont'd)**

<b>Provision</b>	<b>Original Award</b>	<b>Current Award</b>	<b>AWA</b>
<b>Group 3 Employee, including Concrete Floater</b>			
Rate per week (August 1997) (\$)	421.20 (38 hrs @11.08 p/h)	474.62 (38 hrs@12.49 p/h)	484.38 (15% above award)
Fares allowance (April 1997) (\$)	56.50 per week (11.30 per day)	59.00 per week (11.80 per day)	12.00 per day
Special allowance (\$)	7.70 per week	7.70 per week	
Industry allowance (\$)	16.50 per week	16.50 per week	
Meal allowance (paid when more than 1.5 hours overtime has been worked per day) (\$)	7.30 per meal	7.80 per meal	These allowances form part of the <i>concreters allowance</i> .
<b>TOTAL WEEKLY AWARD WAGE (excluding meal allowance and overtime)</b>	<b>501.90</b>	<b>557.82</b>	<b>544.38</b>

**Table 1: Comparison of basic award and AWA wage rates and allowances (cont'd)**

<b>Provision</b>	<b>Original Award</b>	<b>Current Award</b>	<b>AWA</b>
<b>Group 4 Employee, including Builders Labourers</b>			
Rate per week (August 1997) (\$)	392.70 (38 hrs@10.33 p/h)n	445.36 (38 hrs@11.72)	412.34
Fares allowance (April 1997) (\$)	56.50 per week (11.30 per day)	59.00 per week (11.80 per day)	12.00 per day
Special allowance (\$)	7.70 per week	7.70 per week	
Industry allowance (\$)	16.50 per week	16.50 per week	
Meal allowance (paid when more than 1.5 hours overtime has been worked per day) (\$)	7.30 per meal	7.80 per meal	These allowances form part of the <i>concreters allowance</i> .
<b>TOTAL WEEKLY AWARD WAGE (excluding meal allowance and overtime)</b>	<b>473.40</b>	<b>528.56</b>	<b>472.35</b>
			<b>491.97</b>



Table 2 compares non-wage components of the AWA with the Award provisions.

- The AWA changed overtime penalty rates to double time after three hours overtime from the two hours specified in the Award.
- Employees continue to be entitled to 10 days sick leave per annum. Sick leave no longer accrues, but is paid out at up to 50% of value at the end of each year, depending on how much sick leave the employee has used. An employee who takes *no* sick days during the year is paid a bonus of 5 days pay, reducing to 4 days pay if one sick day is taken, 3 days pay if 2 sick days have been taken and so on. Employees who do not use any sick leave over the term of the agreement would receive 15 days pay in lieu of 30 days sick leave.
- Under the Award employers pay a certain proportion of wages into a central redundancy fund on a weekly basis. Employees can access this money either when they are made redundant or when they leave the industry altogether. The AWA contains simplified redundancy provisions. Employees who do not leave the industry 'on the year' stand to lose the proportionate part of the redundancy payment specified in the Award for that part more than the full year they are employed. In other words, while under the Award, redundancy payments are pro-rata, the AWA provides only for yearly rates.
- Allowances are changed substantially in the AWA, however, the impact varies according to the percentage of the concreters allowance allocated to each AWA employee. This allowance ranges from 5% to 35%. Employees on workers' compensation are not entitled to the concreters allowance and D&S does not include accident make-up pay. These employees lose the opportunity of earning these allowances (Crib, Industry and Travel) specified in the Award.
- The AWA provisions for RDOs are more flexible than those specified in the Award and allow for RDOs to be banked to a maximum of ten.
- The span of ordinary hours is changed slightly in the AWA to allow normal working hours to be worked between 6am-4pm instead of 7am-5pm.

**Table 2: Comparison of employment conditions, Award vs AWA**

<b>Provision</b>	<b>Award Provision</b>	<b>AWA</b>
<b>Overtime</b>	The Award specifies that overtime be paid at double time after two hours at time and a half have been worked.	The AWA changes this to double time after three hours time and a half have been worked.
<b>Workers Compensation</b>	The Award provides that the employer make up the difference between the amount paid to an employee under workers compensation and their normal base wage.	The AWA does not contain the make-up pay provisions and is silent on this matter. However, evidence shows that workers on compensation are paid only the amount provided by WorkCover.
<b>Sick Leave</b>	The Award allows for ten days sick leave after the first year of service. These days can be accumulated to a maximum of 100 days. They are not paid out.	The AWA provides for ten days sick leave per annum as per the Award however, with agreement those employees who have not taken any sick leave in one calendar year are entitled to be paid out five days. This number decreases by one day for each day taken during that year.  Sick leave does not accrue.
<b>Redundancy</b>	The Award provides for: <ul style="list-style-type: none"> <li>• 1 – 2 years 2.4 weeks plus 1.75 hours pay per completed week of service to a maximum of 4.8 weeks</li> <li>• 2-3 years 4.8 weeks pay plus 1.6 hours pay for every completed week of service to a maximum of 7 weeks pay.</li> <li>• 3-4 years 7 weeks pay plus 0.73 hours pay for every week of service to a maximum of 8 weeks.</li> <li>• 4+ years 8 weeks pay (maximum)</li> </ul>	The AWA provides for: <ul style="list-style-type: none"> <li>• 1 year service 2.4 weeks</li> <li>• 2 years service 4.8 weeks</li> <li>• 3 years service 7.0 weeks</li> <li>• 4+ years service 8.0 weeks (maximum)</li> </ul>

**Table 2: Comparison of employment conditions, Award vs AWA (cont'd)**

<p><b>Allowances</b></p>	<p>The Award includes</p> <p>Fares allowance (April 1997)     \$11.80 per day</p> <p>Special allowance                     \$7.70 per week</p> <p>Industry allowance                     \$16.50 per week</p> <p>Meal allowance (paid when more than 1.5 hours overtime has been worked)                     \$7.80 per meal</p>	<p>The Allowances in the AWA have been absorbed into a <i>concreters allowance</i> which includes:</p> <ul style="list-style-type: none"> <li>• Crib allowance</li> <li>• Meal allowance</li> <li>• Industry allowance</li> </ul> <p>This <i>concreters allowance</i> is paid as a percentage over the award rate ranging from 0% to 35%.</p> <ul style="list-style-type: none"> <li>• Travel allowance of \$12.00 per day is paid.</li> </ul>
<p><b>Rostered Days Off</b></p>	<p>The Award specifies that a rostered day off should be taken on the fourth Monday of each four week cycle. This day can be changed by agreement in writing at least seven days before the RDO is due.</p> <p>If the RDO is worked the employee is entitled to be paid at penalty rates.</p>	<p>The AWA allows RDOs to be banked to a maximum of ten days.</p> <p>When an employee is required to work on an RDO due to absence the employee nominates another day to be taken at a mutually acceptable time. They are paid at ordinary time for working the RDO.</p> <p>All accrued RDO time is paid on termination.</p>
<p><b>Ordinary Hours of Work</b></p>	<p>Ordinary hours of work specified under the Award are 38 per week. The span during which these 38 hours may be worked is between 7am and 6pm, Monday to Friday.</p>	<p>The AWA specifies that the ordinary time hours per week are 38 to be worked between 6am and 4pm, Monday to Friday.</p>

**Table 2: Comparison of employment conditions, Award vs AWA (cont'd)**

<p><b>Annual Leave</b></p>	<p>Annual leave entitlement is 4 weeks. Loading is 17.5%. Accrued leave is payable on termination. If part of annual leave is to be taken around the Christmas period, the dates for this period are to be determined by July each year.</p>	<p>The AWA provides:</p> <ul style="list-style-type: none"> <li>• 4 weeks leave per annum</li> <li>• 17.5% loading on annual leave</li> <li>• 'All employees where possible are to keep a minimum of 2 weeks leave, to be taken on the Christmas/New Year break.'</li> </ul>
<p><b>Inclement Weather</b></p>	<ul style="list-style-type: none"> <li>• 'An employee shall be entitled to payment by his employer for ordinary time lost through inclement weather for up to thirty-two hours in every period of four weeks.'</li> <li>• 'Employees shall not be required to start a concrete pour in inclement weather. Where a concrete pour has been commenced prior to the commencement of a period of inclement weather employees may be required to complete such concrete pour to a practical stage and for such work shall be paid at a rate of double time calculated to the next hour.'</li> </ul>	<ul style="list-style-type: none"> <li>• Inclement weather is not mentioned in the AWA therefore the Award provisions apply, as the Award picks up all award conditions which are not specifically replaced by the AWA.</li> <li>• Employees are encouraged to take an RDO or sick leave when 'dry work' is required at the start of a day because it is raining from the start of the day.</li> </ul>

## Impact of the AWAs

### ***Analysis of employee earnings***

ACIRRT analysed the payroll data for six employees of D&S: two Finishers, three Labourers, and one Floater. Access to data was limited to employees who gave permission to access to their wages records. Table 3 below summarises the earnings of employees for a six week period immediately prior to the introduction of the AWA and then six weeks immediately after. Two types of hourly rates are included in these calculations; 'hourly rate' and 'effective hourly rate'. The *hourly rate* shown is the actual rate specified under the award or AWA. The *effective hourly rate*, on the other hand, takes into account all payments made for overtime, travel allowance and meal allowances for each of the six employees used. The effective *hourly rate* is an averaged figure and calculated by dividing the total number of hours worked for the six week period by the total gross weekly pay. This rate is deemed to be the most appropriate rate for comparative purposes because of the 'rolling in' effect. That is, the concreters allowance under the AWA absorbs all allowances (except for travel) into the hourly rate while these payments are separate under the award.

Prior to making the AWA, the employees received over-award payments which in some cases were substantial. This reflected the competitive market in the industry in this region. Columns 7 and 8 contain a projection of hourly earnings if the employees had remained on the award and their overaward proportion was maintained (hourly rate and effective hourly rate). The 'projected hourly overaward rate' is that which employees would be paid if they were still covered by the award at the current rate and increases to the award rate to date were also granted (as opposed to absorbed). The overaward percentage has been applied at the same rate that each worker received prior to signing the AWA. It is important to note that these figures are an indicative estimates, as there is no evidence to suggest that the proportion of over-award payments would have been maintained, or whether award increases would have been absorbed in the over-award rates.

**Table 3: Comparison of hourly rates, award vs AWA vs 'projected' overaward rate**

Employee Classification	On Award (1997) (not incl. overaward rates) <i>prior to AWA</i>	Overaward (1997) (incl. overaward rates) <i>prior to AWA</i>		Under AWA		On Award (1998) (not incl. overaward rates)	'Projected' overaward rate (1998) (if percentage overaward was constant and maintained)		Difference between 'effective rates' (AWA vs 'projected' overaward rate) (5) – (8)
		Hourly rate (\$)	Effective hourly rate (\$)	Hourly rate (\$)	Effective hourly rate (\$)		Hourly rate (\$)	Effective hourly rate (\$)	
		Col 1	Col 2	Col 3	Col 4		Col 5	Col 6	
<b>Finisher 1</b>	11.39	13.00	16.18	16.00	19.05	12.81	14.62	17.53	\$1.52
<b>Finisher 2</b>	11.39	15.00	18.93	16.00	19.10	12.81	16.87	20.32	\$-1.22
<b>Floater 1</b>	11.08	13.50	16.35	14.36	17.66	12.49	15.22	18.65	\$-0.99
<b>Labourer 1</b>	10.33	12.00	15.02	12.50	15.32	11.72	13.61	16.55	\$-1.23
<b>Labourer 2</b>	10.33	11.31	15.02	12.50	15.32	11.72	12.83	15.69	\$-0.37
<b>Labourer 3</b>	10.33	11.31	14.08	12.50	14.90	11.72	12.83	15.21	\$-0.31

Source: D&S Concreting Payroll data (6 weeks prior to and 6 weeks after AWA)

Note: Full calculations are found in Appendix 3

'Effective Hourly Rate' is the revised hourly rate based on a calculation of the total gross wages paid for the actual hours worked for the 6 week period (both before and after the AWA was introduced). This rate includes payment for overtime hours worked. It is important to note that the calculation for overtime is based on overtime being paid at double time after three hours (as per the AWA) rather than two hours as provided under the existing award. As a result, the actual take hourly rate in column 8 is considered a slight underestimate.

The table shows that all employees are being paid more per hour under the AWA than they were under the previous award/overaward rates. However, when all subsequent Safety Net Adjustments to the award are taken into account, the majority of employees, and certainly those on the lowest classification, would be better off if they still were covered by the award and still receiving full overaward percentage. This is assuming, of course, that the award Safety Net increases were passed on and not absorbed into the overaward rate.

Table 3 shows that all employees are now receiving a higher hourly rate of pay under the AWA than the overaward rate in 1997 (ie. prior to the AWA). However, when observing the current projected overaward rate (which includes all Safety Net adjustments as at October 1998) to that of the AWA, most employees would have been better off if they remained covered by the award and overaward. The table shows that the differences between the AWA rate, the current award rate and estimated overaward rate are quite significant. For example, for Labourer 1 the difference between the AWA rate and the projected overaward rate is equivalent to a 'loss' of \$1.23 per hour, or \$46.74 for a 38 hour week.

The only employee of the six examined in the table, who is paid more than the projected average hourly over award rate, is Finisher 1. Compared to what he would be paid under the current award and projected overaward rate, he has clearly benefited from signing an AWA. For this worker, the hourly rate under the AWA is higher by \$1.52 or \$57.76 per week.

## Conclusions

### The experience of AWAs at D&S

D&S Concreting is run like a family business. Most of the employees hold the owner in high regard, and think he is a good business person who would never knowingly 'rip them off'. He is considered a 'fair boss' by most workers interviewed. In short D&S is a relatively high trust workplace. Employees did not have any negative opinions of the introduction of AWAs – they did not see it working against their interests – they simply saw it as a decision the owner made for the best interests of the business.

Implementing change of any sort is reliant on high trust. Certainly the high trust relationship at D&S made the introduction of AWAs easier. The D&S experience indicates that employers who may be thinking about introducing AWAs need to consider the environment of their workplace and its receptiveness to the proposed changes.

#### **Impact of AWAs**

AWAs have been used at D&S to formalise the employment conditions of workers that had occurred in practice and to stop the union recruiting. AWAs have, therefore, had little impact on the daily operations of D&S Concreting.

The agreements were not designed to introduce any significant changes to work arrangements or the way in which business is conducted at D&S. The AWA does not deal with matters relating to OHS, training, work and family matters or restructuring of work.

*“There is not much difference under the AWA. I get more pay but that's about it. Pay was increased to cut out things which were not relevant and were pretty stupid anyway. For example if you worked through lunch before you had to try to keep track of your time so that it could be included on your 'clock on' card. Now it is easier because you don't have to watch the clock when you work over lunch.” (Labourer)*

It would be fair to say that the AWA did not deal with the future operations of D&S. Rather it was drafted with the immediate aim of keeping the site non-union. Therefore it is not surprising that the implementation of AWAs did not have a significant impact on the operation of the business. Nor have AWAs had any discernible effect on the experience of the managers and employees who are working under the agreements. The only impact the AWAs had was during the approval stage when the majority of employees felt that the approval process took too long. Additionally, a few employees were not happy at the time of signing AWAs and felt that they had little choice in the matter if employment was to be maintained. Consequently, this had a short-term affect on these workers, who felt that they were not adequately consulted nor had any chance to contribute towards the content of the agreement, but this unease did not last. Besides this, most employees are happy with the AWA and the process by which it was introduced.

AWAs have not been discussed by workers since their introduction. Not surprisingly, given the informal nature of the workplace, the mandatory dispute resolution procedure in the agreement has not been used.



In general the AWAs have been positively received. As the owner himself commented:

*“The AWAs are going smoother than expected - they are better for us...It is easier to pay staff and it is better for [the Foreman] because everyone knows where they stand. Everyone thought it was an excellent agreement. It is not really talked about now.” (owner)*

### **Outcome of AWAs**

Considering the immediate focus of the AWAs, it is not surprising that the case study found that a potential financial disadvantage exists for workers on long term AWAs, particularly as awards are updated and where overawards are paid and maintained. The D&S AWAs run for three years and there is no formal provision for a wage increase during the life of the AWAs. The D&S experience highlights how workers may potentially face a reduction in earnings over the life of the agreements when no wage increases are provided, yet at the same time award rates are updated and the level of overawards are maintained.

A high level of absenteeism remains at D&S Concreting although the owner expected it to improve through the new sick leave provisions in the AWAs. The AWA introduced an incentive for workers not to take sick leave by paying out five unused sick day entitlements at the end of each year. However, the rate of absenteeism has, in fact, worsened. In 1998 to June, there were 12 sick days taken by staff. Over the same period in 1999, there have been 35 days of absence due to sickness. The owner stated that no particular reason could be identified for this worsened performance, and certainly did not attribute this to the introduction of the AWAs.

An unexpected outcome of the AWAs is that the owner believes that D&S lost a tender because the CFMEU refused to allow them to work on a unionised site. In May 1999, D&S was asked by a local builder to pour concrete for a multi-storey building. However the CFMEU would not allow the builder to give the contract to D&S and suggested that D&S was not an acceptable company to contract for work on unionised sites. ACIRRT could not ascertain if this was the reason that D&S lost the tender. This loss of business does not, at present, impact heavily on D&S as the majority of their work is performed on small jobs.

Management's main issue with AWAs is the perceived need to simplify the AWA process for new recruits. *“Every time you start a new bloke you have to go through the process again and start a new agreement. It takes ages” (owner)*. All new workers are placed on a three month probation at D&S where they are paid the same rates as workers on the same job, but employment is not guaranteed. This probationary period is used to examine the worker's knowledge, capability and skills on the job. It is during this three month period the worker may be offered the job. A copy of the AWA is also provided to the new workers and they are informed that the document outlines the conditions of employment if a job offer is made and accepted. Acceptance by the workers of the job offer is expressed through signing the AWA.

*“If an applicant is told that these are the terms and conditions that everyone employed on site is working under and if you don't accept these terms and conditions of work – then we don't have an agreement for you to work here – is that duress? – I don't think so. Why would an employer want someone to work on their site who is employed under different terms and conditions to someone else? (HIA)*

It is the approval process, rather than the required 14 days notice before signing, that needs improvement according to the employer. In his own words, “*Why can’t you get an agreement approved once by the OEA and then each time a new guy starts than you just get them to sign it and file it here?*” This was the only issue voiced by the employer regarding improvements to the AWA process.

For management at D&S, the AWAs are now seen as a permanent feature of employment. Overall “AWAs are working fine” and would be used again according to the owner, who also stated that no problems have been encountered to date.

*“I will probably use AWAs again. If they expired in a month or so then I would definitely use AWAs again, but in three years time you don’t know what the legislation will be or even which government will be in power! It is hard to say, but right now, yes I would renew them” (owner)*

### **Wider issues raised from the D&S experience with AWAs**

This case study provides some useful insights into the operation of AWAs in a small family owned business. While the experiences cannot necessarily be generalised, it raises issues that may warrant further investigation. These are summarised below:

- Overall AWAs such as those operating at D&S, are more likely to work where there is a high level of trust between the workers and management.
- The motivation for introducing the AWAs at D&S was to avoid union influence or ‘interference’. This was supported by both the employer and employees. It is unlikely that AWAs would ever have been considered if this threat of union interference had not been experienced by management.
- Management was clearly unaware of the relative merits of different forms of agreement making available under the legislation. The Employer Association failed to provide adequate advice about the range of agreements available to D&S. Similarly, the owner was not informed by the OEA of other agreement making options.
- Additionally the case study raised the need for improved access to all relevant information on AWAs and related matters, particularly concerning legal rights and obligations, previous conditions of employment and entitlements, and the parties’ rights either as workers or managers. In the D&S case, the majority of employees were not aware of their entitlements pre-AWA and therefore did not feel confident that the conditions offered in the AWA were better than what they were being paid previously.
- Information, particularly for employees, needs to be simplified and more accessible. It should include, for example, a check list of issues that an employee should consider before signing an AWA and questions that they should and can ask their employer. D&S employees made it clear that they had difficulty understanding the effect of AWAs and that they had no source of professional and independent advice. The experience at D&S highlights the need for access to a source of independent advice, particularly where employees are not members of a union. It is clear that employees sometimes face difficulty understanding the effect of AWAs. Most employees had no source of independent advice, although in this case the employer demonstrated a willingness to listen to employee concerns. The OEA provided no independent

advice to the average employee, however, it does so for disadvantaged labour market groups such as women and people with disabilities or from a non-English speaking background. However, there is a need for this advice to be offered to the average worker who may not be able to afford to seek the advice of a solicitor or other independent source. The experiences at D&S suggest that there needs to be an independent advice bureau, particularly for employees who are not members of a union. This could be in the form of a community based organisation.

- The process of AWA making is not necessarily one of 'joint agreement making'. AWAs are drafted by the employer and *offered* to employees. In the case of D&S some of the concerns raised by employees were taken into account by management and the draft agreement restructured. The system of AWAs provides no redress for alternative action for employees in cases where employers are less in tune with the needs and wishes of their workforce.
- While the process of moving to AWAs was discussed with each employee they felt they had little choice. There was no vote or agreement taken collectively about moving from a collectively based award system to an individual system of AWAs.
- The vetting process was long and tortuous for all involved. There seems little reason to follow the same approval process for when every new employee is offered an identical AWA to that which already exists. At some stage, however, (certainly under the current provisions in the Act) there is a need for agreements to be vetted by the OEA or an independent body to ensure that the agreements are identical.
- The statutory requirement for a grievance handling provision in AWAs is not appropriate and it is largely meaningless for small employers such as D&S. A better means of ensuring that employees with a grievance have some redress to an independent umpire needs to be considered.
- The D&S experience highlights the potential financial disadvantage that workers on AWAs may face over time, particularly as awards are updated. Currently keeping wages in AWAs 'up to date' over the three years of the agreement requires the goodwill of the employer or representation by an employee. One recommendation is that the rate to be paid each year of the agreement be made explicit at the time of signing. Each party is then clear if there is to be any rate change during the life of the agreement.

### **General observations**

- Overall, the case study raises several issues for D&S but also more generally for small workplaces who may be seeking to introduce AWAs. These include; the need for a good and open levels of communication and consultation at the workplace during the agreement making process, the availability of independent information on AWA rights and entitlements for employees, full disclosure of entitlements under previous employment conditions for employees and employers, a clear idea of the purpose and objectives of the AWA, and a statement of the anticipated benefits and outcomes of the AWA for both parties.
- It remains unclear how AWAs are to be enforced during the life of the agreement. Currently the onus is on employees to take action through the industrial relations

inspectorate process if there is a breach of AWA provisions. There needs to be some provision for independent audits of AWA provisions to ensure that they are being adhered to.

- Finally it remains unclear how the process of re-negotiating the AWAs on their expiry will work. It remains to be seen what recourse individual employees will have if they do not agree with management proposals. If management chooses to ignore those that do not have the confidence to speak out, then there is a need for a fair and equitable system to resolve such an impasse.

## Appendix 1 – Methodology

A case study approach was undertaken to assess the impact of the AWA at D&S. Several techniques and data sources were used including:

- in-depth interviews with management and nine (9) employees at D&S, and interviews with staff from the OEA, and the Housing Industry Association (the relevant employer association)
- an analysis of the content of the D&S AWA and the relevant award(s)
- a quantitative analysis of employee earnings through access to D&S's payroll data, and
- aggregate statistical data on the Illawarra construction region

There was additional contact with the workplace on an ad-hoc basis in order to obtain additional supportive data and information and to clarify certain issues.

The CFMEU refused to cooperate in this evaluation of AWAs as a matter of policy.

### Interview Details:

Name	Position	Organisation	Date/Time Interviewed
Daniel Lawler & Mark Houghton-Smith	Owner/Manager	D&S Concreting	Thursday, 11 March 1999
Mark Houghton-Smith	Supervisor	D&S Concreting	Friday, 23 April 1999
Andrew Dungan	Regional Area Manager	Office of the Employment Advocate	Monday March 22, 1999
Michael Parubotchy	Assistant Workplace Relations Director	Housing Industry Association (HIA)	Thursday April 15, 1999
Employee A	Labourer	D&S Concreting	Friday, 23 April 1999 12.40-1.20pm
Employee B	Finisher	D&S Concreting	Friday, 23 April 1999 1.20-1.40pm
Employee C	Labourer	D&S Concreting	Friday, 23 April 1999 2.10-2.50pm
Employee D	Plant Operator	D&S Concreting	Wednesday, 28 April 1999 7.50-9.10am
Employee E	Labourer	D&S Concreting	Friday, 23 April 1999 12.10-12.30pm
Employee F	Finisher	D&S Concreting	Friday, 23 April 1999 12.30-1pm
Employee G	Floater	D&S Concreting	Friday, 23 April 1999 1-1.30pm
Employee H	Floater	D&S Concreting	Friday, 23 April 1999 1.30-2.10pm
Employee I	Labourer	D&S Concreting	Friday, 23 April 1999 2.10-2.50pm

## **Appendix 2 – Employee Interview Protocol**

### **EMPLOYEE PROTOCOL**

#### **Background Information**

- How long have you been employed here?

Are you employed:

- full time?
- part time?
- casual?
- What is your position at this workplace? What do you do?
- What was your last job? How does this job compare to your last job? Why did you leave?
- What is it like working here? (culture of the workplace)
- What changes would you like to see at this workplace – what do you like/dislike about working here?
- How many hours do you work each week? Are you happy with your hours?

#### **AWAs**

- How was your employment determined before you signed the AWA?
- How did (idea of having) the AWAs come about?
- Why did you agree that an AWA was the best option for you (ie were you given any options or told that you were now being employed under an AWA)?
- What do you think the benefits of signing an AWA have been for you?

#### **Consultation**

- How were AWAs introduced?
- Describe the consultation process used. Were there meetings about the AWA? Was there an individual session with yourself and management about the AWA? In this session did you feel that you could ask questions freely?
- Do you feel that you have adequate input into the content of the agreement?

#### **OEA**

- Did you receive a copy of the information kit from the OEA explaining all about AWAs? (If yes, did you read it? Did you understand it?)
- Did you feel that you could ask questions at any time about the AWA? Did you indeed ask any questions or seek independent advice (including calling the OEA or a solicitor)?
- If you contacted the OEA for assistance/explanation was the information provided useful?

#### **Negotiating and Signing the AWA**

- Did you fully understand the agreement before signing it?

- Did you at any time feel pressured into signing the agreement?
- What were the things you liked/disliked about the AWA? (ie changing of sick leave and redundancy provisions... - were you happy with the new allowance system and the level at which you were classified – ie the percentage you received?)
- Describe the process by which you were classified at the level you are paid at? Were you consulted and did you talk about your skills the classification level with management?
- Why did you sign the AWA?
- Do you think you are better off as a result of signing an AWA? Why, why not?
- Have you had any problems since signing the AWA (such as trying to be reclassified upwards etc) Are you actually paid the rate specified in the AWA (because some may be getting more than the rate in the AWA due to an informal agreement – do they feel this is a concrete agreement to pay over the AWA rate – is it formalised anywhere?)

#### **Future**

- Are AWAs something that you still talk about – ie wages, classification levels etc?
- Do you think you have been better off under AWAs? Why/Why not/Or has it made no difference?

#### **Overtime**

- Do you work overtime?
- Is this paid or do you take TOIL – do you get this at the overtime rates?
- How much overtime would you work in an average week?
- Do you take breaks – morning and lunch time breaks – are these paid?

#### **Other**

- Do you have tax taken out of your wages? Or do you pay it yourself?
- Which superannuation scheme do you belong to?
- What happens if you have an accident at work? Do you get accident make-up pay? Do you get compo?

### Appendix 3 – Analysis of Payroll Data

Table A1: Finisher 1 Earnings

Finisher 1	Hrly Rate (\$)	Pay Date	GROSS PAY (\$)	Total Wkly Hrs	Ord Hrs	O/T @ 1.5x	O/T @ 2x	Incl Weath (hrs)	RDOs	Sick Pay	Pub Hol	Crib Brk	Total Equiv Ord Hrs	Travel (units)	Travel (\$)	Meal (units)	Meal (\$)
Prior to AWA	\$13.00	16/04/98	\$611.50	41.84	22.8	3.25	0.25				15.2	0.34	43.72	3	\$35.40	1	\$7.80
	\$13.00	9/04/98	\$764.22	47.09	38	5	3.75					0.34	53.34	6	\$70.80		\$0.00
	\$13.00	2/04/98	\$958.31	55.17	38	8	8.5					0.67	67.67	6	\$70.80	1	\$7.80
	\$13.00	26/03/98	\$773.97	47.09	30.4	3.5	5.25			7.6		0.34	54.09	6	\$70.80		\$0.00
	\$13.00	19/03/98	\$878.69	51.67	38	6.25	6.75					0.67	61.55	6	\$70.80	1	\$7.80
	\$13.00	12/03/98	\$737.30	49.09	38	6.25	4.5					0.34	56.72	6	\$70.80	1	\$7.80
<b>TOTAL FOR 6 WKS:</b>	<b>\$16.18</b>	<b>124.5%</b>	<b>\$4,723.99</b>	<b>291.95</b>	<b>205.20</b>	<b>32.25</b>	<b>29.00</b>	<b>0.00</b>	<b>0.00</b>	<b>7.60</b>	<b>15.20</b>	<b>2.70</b>	<b>337.08</b>	<b>33.00</b>	<b>\$389.40</b>	<b>4.00</b>	<b>\$31.20</b>
On AWA	\$16.00	4/06/98	\$716.00	40	38	2							41.00	5	\$60.00		
	\$16.00	29/05/98	\$794.00	43.25	38	5.25							45.88	5	\$60.00		
	\$16.00	21/05/98	\$888.00	46.25	25.8	7	1.25	12.2					51.00	6	\$72.00		
	\$16.00	14/05/98	\$1,066.00	52.5	38	9.75	4.75						62.13	6	\$72.00		
	\$16.00	7/05/98	\$1,002.00	50	30.4	7.75	4.25	7.6					58.13	6	\$72.00		
	\$16.00	30/04/98	\$704.00	40	21.2	2		1.6	7.6	7.6			41.00	4	\$48.00		
	\$16.00	23/04/98	\$766.00	42	38	3.75	0.25						44.13	5	\$60.00		
<b>TOTAL FOR 6 WKS:</b>	<b>\$19.05</b>	<b>119.1%</b>	<b>\$5,220.00</b>	<b>274.00</b>	<b>191.40</b>	<b>35.50</b>	<b>10.50</b>	<b>21.40</b>	<b>7.60</b>	<b>7.60</b>	<b>0.00</b>	<b>0.00</b>	<b>302.25</b>	<b>98.00</b>	<b>\$384.00#</b>	<b>8.00</b>	<b>\$62.40</b>
<b>TOTAL FOR 7 WKS:</b>	<b>\$18.90</b>	<b>118.2%</b>	<b>\$5,936.00</b>	<b>314.00</b>	<b>229.40</b>	<b>37.50</b>	<b>10.50</b>	<b>21.40</b>	<b>7.60</b>	<b>7.60</b>	<b>0.00</b>	<b>0.00</b>	<b>343.25</b>	<b>37.00</b>	<b>\$444.00</b>	<b>0.00</b>	<b>\$0.00</b>
Projected Current	\$14.62	4/06/98	\$659.42	40	38	2							41.00	5	\$60.00		
Overaward Rate	\$14.62	29/05/98	\$730.69	43.25	38	5.25							45.88	5	\$60.00		
	\$14.62	21/05/98	\$817.62	46.25	25.8	7	1.25	12.2					51.00	6	\$72.00		
	\$14.62	14/05/98	\$980.27	52.5	38	9.75	4.75						62.13	6	\$72.00		
	\$14.62	7/05/98	\$921.79	50	30.4	7.75	4.25	7.6					58.13	6	\$72.00		
	\$14.62	30/04/98	\$647.42	40	21.2	2		1.6	7.6	7.6			41.00	4	\$48.00		
	\$14.62	23/04/98	\$705.11	42	38	3.75	0.25						44.13	5	\$60.00		
<b>TOTAL FOR 6 WKS:</b>	<b>\$17.53</b>	<b>119.9%</b>	<b>\$4,802.90</b>	<b>274.00</b>	<b>191.40</b>	<b>35.50</b>	<b>10.50</b>	<b>21.40</b>	<b>7.60</b>	<b>7.60</b>	<b>0.00</b>	<b>0.00</b>	<b>302.25</b>	<b>32.00</b>	<b>\$384.00</b>	<b>0.00</b>	<b>\$0.00</b>
<b>TOTAL FOR 7 WKS:</b>	<b>\$17.40</b>	<b>119.0%</b>	<b>\$5,462.32</b>	<b>314.00</b>	<b>229.40</b>	<b>37.50</b>	<b>10.50</b>	<b>21.40</b>	<b>7.60</b>	<b>7.60</b>	<b>0.00</b>	<b>0.00</b>	<b>343.25</b>	<b>37.00</b>	<b>\$444.00</b>	<b>0.00</b>	<b>\$0.00</b>

Source: D&S Concreting Payroll data (6 weeks prior to and 6 weeks after AWA)



**Table A2: Finisher 2 Earnings**

Finisher 2	Hrly Rate (\$)	Pay Date	GROSS PAY (\$)	Total Wkly-Ord Hrs	O/T @ 1.5x	O/T @ 2x	Incl Weath (hrs)	RDOs	Sick Pay	Pub Hol	Crib Break	Total Equiv Ord Hrs	Travel (units)	Travel (\$)	Meal (units)	Meal (\$)
Prior to AWA	\$15.00	16/04/98	\$1,115.25	62.6	8.5	7.5		7.6		15.2	1	74.35	5	\$59.00	2	\$15.60
	\$15.00	9/04/98	\$995.78	51.5	6.75	5.75					1	60.63	6	\$70.80	2	\$15.60
	\$15.00	2/04/98	\$908.45	48.09	4.5	5.25					0.34	55.59	5	\$59.00	2	\$15.60
	\$15.00	26/03/98	\$1,058.40	53.84	7	8.5					0.34	65.84	6	\$70.80	0	\$0.00
	\$15.00	19/03/98	\$1,016.78	54.17	6.25	7.25					0.67	62.55	6	\$70.80	1	\$7.80
	\$15.00	12/03/98	\$1,158.55	60.19	7.5	6.75		7.6			0.34	70.69	7	\$82.60	2	\$15.60
<b>TOTAL FOR 6 WKS:</b>	<b>\$18.93</b>	<b>126.2%</b>	<b>\$6,253.21</b>	<b>330.39</b>	<b>40.50</b>	<b>41.00</b>	<b>0.00</b>	<b>15.20</b>	<b>0.00</b>	<b>15.20</b>	<b>3.69</b>	<b>389.64</b>	<b>35.00</b>	<b>\$413.00</b>	<b>9.00</b>	<b>\$70.20</b>
On AWA	\$16.00	4/06/98	\$1,064.00	52.25	9	5.25						62.00	6	\$72.00		
	\$16.00	29/05/98	\$1,016.00	50.25	7	5.25						59.00	6	\$72.00		
	\$16.00	21/05/98	\$788.00	43	5		12.2					45.50	5	\$60.00		
	\$16.00	14/05/98	\$1,008.00	50	7	5						58.50	6	\$72.00		
	\$16.00	7/05/98	\$868.00	45	4.5	2.5	7.6					49.75	6	\$72.00		
	\$16.00	30/04/98	\$819.00	47.35	1.75			7.6	7.6			48.23	4	\$48.00		
	\$16.00	23/04/98	\$1,036.00	54.25	11.5	4.75						64.75	6	\$72.00		
<b>TOTAL FOR 6 WKS:</b>	<b>\$19.10</b>	<b>119.4%</b>	<b>\$5,535.00</b>	<b>289.85</b>	<b>36.75</b>	<b>17.50</b>	<b>19.80</b>	<b>7.60</b>	<b>7.60</b>	<b>0.00</b>	<b>0.00</b>	<b>325.73</b>	<b>33.00</b>	<b>\$396.00</b>	<b>0.00</b>	<b>\$0.00</b>
<b>TOTAL FOR 7 WKS:</b>	<b>\$19.29</b>	<b>120.6%</b>	<b>\$6,599.00</b>	<b>342.10</b>	<b>45.75</b>	<b>22.75</b>	<b>19.80</b>	<b>7.60</b>	<b>7.60</b>	<b>0.00</b>	<b>0.00</b>	<b>387.73</b>	<b>39.00</b>	<b>\$468.00</b>	<b>0.00</b>	<b>\$0.00</b>
Projected Current	\$16.87	4/06/98	\$1,117.94	52.25	9	5.25						62.00	6	\$72.00		
Overaward Rate	\$16.87	29/05/98	\$1,067.33	50.25	7	5.25						59.00	6	\$72.00		
	\$16.87	21/05/98	\$827.59	43	5		12.2					45.50	5	\$60.00		
	\$16.87	14/05/98	\$1,058.90	50	7	5						58.50	6	\$72.00		
	\$16.87	7/05/98	\$911.28	45	4.5	2.5	7.6					49.75	6	\$72.00		
	\$16.87	30/04/98	\$861.56	47.35	1.75			7.6	7.6			48.23	4	\$48.00		
	\$16.87	23/04/98	\$1,164.33	54.25	11.5	4.75						64.75	6	\$72.00		
<b>TOTAL FOR 6 WKS:</b>	<b>\$20.32</b>	<b>120.5%</b>	<b>\$5,890.98</b>	<b>289.85</b>	<b>36.75</b>	<b>17.50</b>	<b>19.80</b>	<b>7.60</b>	<b>7.60</b>	<b>0.00</b>	<b>0.00</b>	<b>325.73</b>	<b>33.00</b>	<b>\$396.00</b>	<b>0.00</b>	<b>\$0.00</b>
<b>TOTAL FOR 7 WKS:</b>	<b>\$20.49</b>	<b>121.4%</b>	<b>\$7,008.92</b>	<b>342.10</b>	<b>45.75</b>	<b>22.75</b>	<b>19.80</b>	<b>7.60</b>	<b>7.60</b>	<b>0.00</b>	<b>0.00</b>	<b>387.73</b>	<b>39.00</b>	<b>\$468.00</b>	<b>0.00</b>	<b>\$0.00</b>

Source: D&S Concreting Payroll data (6 weeks prior to and 6 weeks after AWA)

**Table A3: Labourer 1 Earnings**

Labourer 1	Hrly Rate (\$)	Pay Date	GROSS PAY (\$)	Total Wkly Hrs	Ord Hrs	OIT @ 1.5x	OIT @ 2x	Inclcm Weath (hrs)	RDOs	Sick Pay	Pub Hol	Crib Break	Total Equiv Ord Hrs	Travel (units)	Travel (\$)	Meal (units)	Meal (\$)
Prior to AWA	\$12.00	16/04/98	\$599.24	43.67	15.2	4	1			7.6	15.2	0.67	46.67	2	\$23.60	2	\$15.60
	\$12.00	9/04/98	\$808.08	54.69	38	4	4.75		7.6			0.34	61.44	6	\$70.80		\$0.00
	\$12.00	2/04/98	\$569.00	41	38	3							42.50	5	\$59.00		\$0.00
	\$12.00	26/03/98	\$845.94	52.67	38	6.75	7.25					0.67	63.30	6	\$70.80	2	\$15.60
	\$12.00	19/03/98	\$842.04	52.67	38	10	4					0.67	61.67	6	\$70.80	4	\$31.20
	\$12.00	12/03/98	\$722.88	47.34	38	4	5					0.37	54.37	6	\$70.80		\$0.00
<b>TOTAL FOR 6 WKS:</b>	<b>\$15.02</b>	<b>125.2%</b>	<b>\$4,387.18</b>	<b>292.04</b>	<b>205.20</b>	<b>31.75</b>	<b>22.00</b>	<b>0.00</b>	<b>7.60</b>	<b>7.60</b>	<b>15.20</b>	<b>2.72</b>	<b>329.95</b>	<b>31.00</b>	<b>\$365.80</b>	<b>8.00</b>	<b>\$62.40</b>
On AWA	\$12.50	4/06/98	\$748.56	47.75	38	6.75	3						54.13	6	\$72.00		
	\$12.50	29/05/98	\$782.94	49.25	38	7.25	4						56.88	6	\$72.00		
	\$12.50	21/05/98	\$657.94	43.5	25.8	4.25	1.25	12.2					46.88	6	\$72.00		
	\$12.50	14/05/98	\$756.38	47.75	38	5.5	4.25						54.75	6	\$72.00		
	\$12.50	7/05/98	\$638.13	43.5	30.4	5.5		7.6					46.25	5	\$60.00		
	\$12.50	30/04/98	\$609.99	42	33.55	4		4.45					44.00	5	\$60.00		
	\$12.50	23/04/98	\$734.50	46.75	38	5	3.75						53.00	6	\$72.00		
<b>TOTAL FOR 6 WKS:</b>	<b>\$15.32</b>	<b>122.6%</b>	<b>\$4,179.88</b>	<b>272.75</b>	<b>203.75</b>	<b>31.50</b>	<b>13.25</b>	<b>24.25</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>301.75</b>	<b>34.00</b>	<b>\$408.00</b>	<b>0.00</b>	<b>\$0.00</b>
<b>TOTAL FOR 7 WKS:</b>	<b>\$15.38</b>	<b>123.0%</b>	<b>\$4,928.44</b>	<b>320.50</b>	<b>241.75</b>	<b>38.25</b>	<b>16.25</b>	<b>24.25</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>355.88</b>	<b>40.00</b>	<b>\$480.00</b>	<b>0.00</b>	<b>\$0.00</b>
Projected Current	\$13.61	4/06/98	\$808.64	47.75	38	6.75	3						54.13	6	\$72.00		
Overaward Rate	\$13.61	29/05/98	\$846.07	49.25	38	7.25	4						56.88	6	\$72.00		
	\$13.61	21/05/98	\$709.97	43.5	25.8	4.25	1.25	12.2					46.88	6	\$72.00		
	\$13.61	14/05/98	\$817.15	47.75	38	5.5	4.25						54.75	6	\$72.00		
	\$13.61	7/05/98	\$689.46	43.5	30.4	5.5		7.6					46.25	5	\$60.00		
	\$13.61	30/04/98	\$658.84	42	33.55	4		4.45					44.00	5	\$60.00		
	\$13.61	23/04/98	\$793.33	46.75	38	5	3.75						53.00	6	\$72.00		
<b>TOTAL FOR 6 WKS:</b>	<b>\$16.55</b>	<b>121.6%</b>	<b>\$4,514.82</b>	<b>272.75</b>	<b>203.75</b>	<b>31.50</b>	<b>13.25</b>	<b>24.25</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>301.75</b>	<b>34.00</b>	<b>\$408.00</b>	<b>0.00</b>	<b>\$0.00</b>
<b>TOTAL FOR 7 WKS:</b>	<b>\$16.61</b>	<b>122.0%</b>	<b>\$5,323.46</b>	<b>320.50</b>	<b>241.75</b>	<b>38.25</b>	<b>16.25</b>	<b>24.25</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>355.88</b>	<b>40.00</b>	<b>\$480.00</b>	<b>0.00</b>	<b>\$0.00</b>

Source: D&S Concreting Payroll data (6 weeks prior to and 6 weeks after AWA)

**Table A4: Labourer 2 Earnings**

Labourer 2	Hrly Rate (\$)	Pay Date	GROSS PAY (\$)	Total Wkly Hrs	Ord Hrs	OIT @ 1.5x	OIT @ 2x	Incl Weath (hrs)	RDOs	Sick Pay	Pub Hol	Crib Break	Total Equiv Ord Hrs	Travel (units)	Travel (\$)	Meal (units)	Meal (\$)
Prior to AWA	\$12.00	16/04/98	\$599.24	43.67	15.2	4	1			7.6	15.2	0.67	46.67	2	\$23.60	2	\$15.60
	\$12.00	9/04/98	\$808.08	54.69	38	4	4.75		7.6			0.34	61.44	6	\$70.80		\$0.00
	\$12.00	2/04/98	\$569.00	41	38	3							42.50	5	\$59.00		\$0.00
	\$12.00	26/03/98	\$845.94	52.67	38	6.75	7.25					0.67	63.30	6	\$70.80	2	\$15.60
	\$12.00	19/03/98	\$842.04	52.67	38	10	4					0.67	61.67	6	\$70.80	4	\$31.20
	\$12.00	12/03/98	\$722.88	47.34	38	4	5					0.37	54.37	6	\$70.80		\$0.00
<b>TOTAL FOR 6 WKS:</b>	<b>\$15.02</b>	<b>125.2%</b>	<b>\$4,387.18</b>	<b>292.04</b>	<b>205.20</b>	<b>31.75</b>	<b>22.00</b>	<b>0.00</b>	<b>7.60</b>	<b>7.60</b>	<b>15.20</b>	<b>2.72</b>	<b>329.95</b>	<b>31.00</b>	<b>\$365.80</b>	<b>8.00</b>	<b>\$62.40</b>
On AWA	\$12.50	4/06/98	\$748.56	47.75	38	6.75	3						54.13	6	\$72.00		
	\$12.50	29/05/98	\$782.94	49.25	38	7.25	4						56.88	6	\$72.00		
	\$12.50	21/05/98	\$657.94	43.5	25.8	4.25	1.25	12.2					46.88	6	\$72.00		
	\$12.50	14/05/98	\$756.38	47.75	38	5.5	4.25						54.75	6	\$72.00		
	\$12.50	7/05/98	\$638.13	43.5	30.4	5.5		7.6					46.25	5	\$60.00		
	\$12.50	30/04/98	\$609.99	42	33.55	4		4.45					44.00	5	\$60.00		
	\$12.50	23/04/98	\$734.50	46.75	38	5	3.75						53.00	6	\$72.00		
<b>TOTAL FOR 6 WKS:</b>	<b>\$15.32</b>	<b>122.6%</b>	<b>\$4,179.88</b>	<b>272.75</b>	<b>203.75</b>	<b>31.50</b>	<b>13.25</b>	<b>24.25</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>301.75</b>	<b>34.00</b>	<b>\$408.00</b>	<b>0.00</b>	<b>\$0.00</b>
<b>TOTAL FOR 7 WKS:</b>	<b>\$15.38</b>	<b>123.0%</b>	<b>\$4,928.44</b>	<b>320.50</b>	<b>241.75</b>	<b>38.25</b>	<b>16.25</b>	<b>24.25</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>355.88</b>	<b>40.00</b>	<b>\$480.00</b>	<b>0.00</b>	<b>\$0.00</b>
Projected Current	\$12.83	4/06/98	\$766.42	47.75	38	6.75	3						54.13	6	\$72.00		
Overaward Rate	\$12.83	29/05/98	\$801.71	49.25	38	7.25	4						56.88	6	\$72.00		
	\$12.83	21/05/98	\$673.41	43.5	25.8	4.25	1.25	12.2					46.88	6	\$72.00		
	\$12.83	14/05/98	\$774.44	47.75	38	5.5	4.25						54.75	6	\$72.00		
	\$12.83	7/05/98	\$653.39	43.5	30.4	5.5		7.6					46.25	5	\$60.00		
	\$12.83	30/04/98	\$624.52	42	33.55	4		4.45					44.00	5	\$60.00		
	\$12.83	23/04/98	\$751.99	46.75	38	5	3.75						53.00	6	\$72.00		
<b>TOTAL FOR 6 WKS:</b>	<b>\$15.69</b>	<b>122.3%</b>	<b>\$4,279.45</b>	<b>272.75</b>	<b>203.75</b>	<b>31.50</b>	<b>13.25</b>	<b>24.25</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>301.75</b>	<b>34.00</b>	<b>\$408.00</b>	<b>0.00</b>	<b>\$0.00</b>
<b>TOTAL FOR 7 WKS:</b>	<b>\$15.74</b>	<b>122.7%</b>	<b>\$5,045.88</b>	<b>320.50</b>	<b>241.75</b>	<b>38.25</b>	<b>16.25</b>	<b>24.25</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>355.88</b>	<b>40.00</b>	<b>\$480.00</b>	<b>0.00</b>	<b>\$0.00</b>

Source: D&S Concreting Payroll data (6 weeks prior to and 6 weeks after AWA)

**Table A5: Labourer 3 Earnings**

Labourer 3	Hrly Rate (\$)	Pay Date	GROSS PAY (\$)	Total Wkly Hrs	Ord Hrs	OIT @ 1.5x	OIT @ 2x	Incl Weath (hrs)	RDOs	Sick Pay	Pub Hol	Crib Break	Total Equiv Ord Hrs	Travel (units)	Travel (\$)	Meal (units)	Meal (\$)
Prior to AWA	\$11.31	16/04/98	\$490.63	39.5	22.8	1.5					15.2		40.25	3	\$35.40		\$0.00
	\$11.31	9/04/98	\$711.06	48.92	38	6.5	3.75					0.67	55.92	6	\$70.80	1	\$7.80
	\$11.31	2/04/98	\$543.92	41.25	38	3.25							42.88	5	\$59.00		\$0.00
	\$11.31	26/03/98	\$811.95	53.09	30.4	6	8.75		7.6			0.34	64.84	6	\$70.80	1	\$7.80
	\$11.31	19/03/98	\$774.68	51.67	38	6.25	6.75					0.67	61.55	6	\$70.80	1	\$7.80
	\$11.31	12/03/98	\$543.23	40.75	38	2.75							42.13	5	\$59.00	1	\$7.80
<b>TOTAL FOR 6 WKS:</b>	<b>\$14.08</b>	<b>124.5%</b>	<b>\$3,875.47</b>	<b>275.18</b>	<b>205.20</b>	<b>26.25</b>	<b>19.25</b>	<b>0.00</b>	<b>7.60</b>	<b>0.00</b>	<b>15.20</b>	<b>1.68</b>	<b>307.56</b>	<b>31.00</b>	<b>\$365.80</b>	<b>4.00</b>	<b>\$31.20</b>
On AWA	\$12.50	4/06/98	\$600.63	41.5	38	3.5							43.25	5	\$60.00		
	\$12.50	29/05/98	\$814.19	50.5	38	7.25	5.25						59.38	6	\$72.00		
	\$12.50	21/05/98	\$591.25	40	25.8	3		12.2					42.50	5	\$60.00		
	\$12.50	14/05/98	\$811.06	50.5	38	7.75	4.75						59.13	6	\$72.00		
	\$12.50	7/05/98	\$807.94	50.5	30.4	8.25	4.25	7.6					58.88	6	\$72.00		
	\$12.50	30/04/98	\$549.07	47.55	20.95	0.75		1.85	15.2				39.13	4	\$48.00		
	\$12.50	23/04/98	\$625.63	42.75	38	4.5	0.25						45.25	5	\$60.00		
<b>TOTAL FOR 6 WKS:</b>	<b>\$14.90</b>	<b>119.2%</b>	<b>\$4,199.14</b>	<b>281.80</b>	<b>191.15</b>	<b>31.50</b>	<b>14.50</b>	<b>21.65</b>	<b>15.20</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>304.25</b>	<b>32.00</b>	<b>\$384.00</b>	<b>0.00</b>	<b>\$0.00</b>
<b>TOTAL FOR 7 WKS:</b>	<b>\$14.85</b>	<b>118.8%</b>	<b>\$4,799.77</b>	<b>323.30</b>	<b>229.15</b>	<b>35.00</b>	<b>14.50</b>	<b>21.65</b>	<b>15.20</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>347.50</b>	<b>37.00</b>	<b>\$444.00</b>	<b>0.00</b>	<b>\$0.00</b>
Projected Current	\$12.83	4/06/98	\$614.90	41.5	38	3.5							43.25	5	\$60.00		
Overaward Rate	\$12.83	29/05/98	\$833.78	50.5	38	7.25	5.25						59.38	6	\$72.00		
	\$12.83	21/05/98	\$605.28	40	25.8	3		12.2					42.50	5	\$60.00		
	\$12.83	14/05/98	\$830.57	50.5	38	7.75	4.75						59.13	6	\$72.00		
	\$12.83	7/05/98	\$827.37	50.5	30.4	8.25	4.25	7.6					58.88	6	\$72.00		
	\$12.83	30/04/98	\$549.97	47.55	20.95	0.75		1.85	15.2				39.13	4	\$48.00		
	\$12.83	23/04/98	\$640.56	42.75	38	4.5	0.25						45.25	5	\$60.00		
<b>TOTAL FOR 6 WKS:</b>	<b>\$15.21</b>	<b>118.6%</b>	<b>\$4,287.53</b>	<b>281.80</b>	<b>191.15</b>	<b>31.50</b>	<b>14.50</b>	<b>21.65</b>	<b>15.20</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>304.25</b>	<b>32.00</b>	<b>\$384.00</b>	<b>0.00</b>	<b>\$0.00</b>
<b>TOTAL FOR 7 WKS:</b>	<b>\$15.16</b>	<b>118.2%</b>	<b>\$4,902.43</b>	<b>323.30</b>	<b>229.15</b>	<b>35.00</b>	<b>14.50</b>	<b>21.65</b>	<b>15.20</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>347.50</b>	<b>37.00</b>	<b>\$444.00</b>	<b>0.00</b>	<b>\$0.00</b>

Source: D&S Concreting Payroll data (6 weeks prior to and 6 weeks after AWA)

**Table A6: Floater Earnings**

Floater	Hrly Rate (\$)	Pay Date	GROSS PAY (\$)	Total Wkly Hrs	Ord Hrs	OIT @ 1.5x	OIT @ 2x	Incl Weath (hrs)	RDOs	Sick Pay	Pub Hol	Crib Break	Total Equiv Ord Hrs	Travel (units)	Travel (\$)	Meal (units)	Meal (\$)
Prior to AWA	\$13.50	11/06/98	\$575.39	38.75	20.8	0.75		2	7.6		7.6		39.13	4	\$47.20		\$0.00
	\$13.50	4/06/98	\$831.39	48.84	38	6	4.5					0.34	56.34	6	\$70.80		\$0.00
	\$13.50	29/05/98	\$853.33	49.34	38	4.75	6.25					0.34	57.97	6	\$70.80		\$0.00
	\$13.50	21/05/98	\$610.18	39.5	25.8	1.5		12.2					40.25	5	\$59.00	1	\$7.80
	\$13.50	14/05/98	\$508.23	32.9	30.4	1.5							32.65	4	\$47.20		\$0.00
	\$13.50	7/05/98	\$852.09	49.42	30.4	5.75	5	7.6				0.67	57.30	6	\$70.80	1	\$7.80
<b>TOTAL FOR 6 WKS:</b>	<b>\$16.35</b>	<b>121.1%</b>	<b>\$4,230.61</b>	<b>238.75</b>	<b>183.40</b>	<b>20.25</b>	<b>15.75</b>	<b>21.80</b>	<b>7.60</b>	<b>0.00</b>	<b>7.60</b>	<b>1.35</b>	<b>283.63</b>	<b>31.00</b>	<b>\$365.80</b>	<b>2.00</b>	<b>\$15.60</b>
On AWA	\$14.36	27/01/99	\$555.12	36.15	20.95				7.6		7.6		36.15	3	\$36.00		
	\$14.36	4/02/99	\$807.28	46.5	38	4.25	4.25						52.88	4	\$48.00		
	\$14.36	11/02/99	\$803.03	47.5	30.4	5.5	4		7.6				54.25	2	\$24.00		
	\$14.36	18/02/99	\$949.75	52	38	9.75	4.25						61.13	6	\$72.00		
	\$14.36	25/02/99	\$856.41	47.75	38	5.75	4						54.63	6	\$72.00		
	\$14.36	4/03/99	\$821.00	46.25	30.4	3	5.25		7.6				53.00	5	\$60.00		
<b>TOTAL FOR 6 WKS:</b>	<b>\$17.66</b>	<b>123.0%</b>	<b>\$4,237.47</b>	<b>240.00</b>	<b>174.80</b>	<b>28.25</b>	<b>21.75</b>	<b>0.00</b>	<b>15.20</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>275.88</b>	<b>23.00</b>	<b>\$276.00</b>	<b>0.00</b>	<b>\$0.00</b>
Projected Current	\$15.22	27/01/99	\$586.20	36.15	20.95				7.6		7.6		36.15	3	\$36.00		
Overaward Rate	\$15.22	4/02/99	\$852.76	46.5	38	4.25	4.25						52.88	4	\$48.00		
	\$15.22	11/02/99	\$849.69	47.5	30.4	5.5	4		7.6				54.25	2	\$24.00		
	\$15.22	18/02/99	\$1,002.32	52	38	9.75	4.25						61.13	6	\$72.00		
	\$15.22	25/02/99	\$903.39	47.75	38	5.75	4						54.63	6	\$72.00		
	\$15.22	4/03/99	\$866.66	46.25	30.4	3	5.25		7.6				53.00	5	\$60.00		
<b>TOTAL FOR 6 WKS:</b>	<b>\$18.65</b>	<b>122.5%</b>	<b>\$4,474.82</b>	<b>240.00</b>	<b>174.80</b>	<b>28.25</b>	<b>21.75</b>	<b>0.00</b>	<b>15.20</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>275.88</b>	<b>23.00</b>	<b>\$276.00</b>	<b>0.00</b>	<b>\$0.00</b>

Source: D&S Concreting Payroll data (6 weeks prior to and 6 weeks after AWA)

**Table A6: Calculation of percentage 'above award' rates – 1997 and 1998**

Award Classification	Group 2		Group 4		Group 4		Group 4		Group 3	
	Finisher 1	Finisher 2	Labourer 1	Labourer 2	Labourer 2	Labourer 3	Labourer 3	Labourer 3	Labourer 3	Floater
Old Award (Base) Rate as at August 1997 (p/hr for 38 hour week)	\$11.39	\$11.39	\$10.33	\$10.33	\$10.33	\$10.33	\$10.33	\$10.33	\$10.33	\$11.08
D&S Overaward Rate as at June 1998 (p/hr)	\$13.00	\$15.00	\$12.00	\$11.31	\$11.31	\$11.31	\$11.31	\$11.31	\$11.31	\$13.50
Proportion of Award Rate to D&S Overaward Rate (%)	114.14%	131.69%	116.17%	109.49%	109.49%	109.49%	109.49%	109.49%	109.49%	121.84%
Current Award (Base) Rate as at Oct 1998 (p/hr)	\$12.81	\$12.81	\$11.72	\$11.72	\$11.72	\$11.72	\$11.72	\$11.72	\$11.72	\$12.49
<b>Projected Current D&amp;S Overaward Rate</b>	<b>\$14.62</b>	<b>\$16.87</b>	<b>\$13.61</b>	<b>\$12.83</b>	<b>\$12.83</b>	<b>\$12.83</b>	<b>\$12.83</b>	<b>\$12.83</b>	<b>\$12.83</b>	<b>\$15.22</b>

Source: D&S Concreting Payroll data (6 weeks prior to and 6 weeks after AWA) & relevant award(s)

## Appendix 4 - Background to AWAs

The principle of the *Workplace Relations Act 1996 (Cth)* (herein WR Act), is

“...to provide a framework for cooperative workplace relations which promotes the economic prosperity and welfare of the people of Australia by:

- b) ensuring that the primary responsibility for determining matters affecting the relationship between employers and employees rests with the employer and employees at the workplace or enterprise level;
- c) enabling employers and employees to choose the most appropriate form of agreement for their particular circumstances, whether or not that form is provided for by this Act; and
- d) providing the means:
  - (i) for wages and conditions of employment to be determined as far as possible by the agreement of employers and employees at the workplace or enterprise level, upon a foundation of minimum standards; and
  - (i) 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 organisation, which supports fair and effective agreement-making and ensures that they abide by awards and agreements applying to them.”

The Federal Government considers that AWAs are an alternative and simpler approach to regulating the terms and conditions for workers. As the Workplace Relations Minister, Mr Peter Reith stated, AWAs are:

*...a new agreement stream which minimises third party intervention. It is designed, subject to a safety net, to get workers into jobs without delay, without conflict between award parties and without costly litigation. ...The system is no longer exclusively about registered organisations and collective bargaining; it is now about workers and employers and their particular and local needs. ...Small and medium sized businesses will be able to use federal arrangements for Australian workplace agreements or for collective agreements without the need for an award if that is their wish, and without the need to become embroiled in the jurisdictional and constitutional complexities which have dogged their quest for flexibility and productivity...”. (Minister for Workplace Relations, Peter Reith, House of Reps Hansard 21/11/1996).*

The OEA describes AWAs as written agreements between an employer and an employee about the employee's terms and conditions of employment. Each employee who wishes to be party to an AWA must sign it. Legally each agreement between an employee and the employer is a separate AWA, although several may be included in one document. AWAs give employers and employees flexibility in setting wages and conditions, and enable them to create arrangements that suit their workplaces and preferences. (OEA Website, 30/7/1999)

According to the latest data available from the OEA, by the end of April 1999, a total of 55,548 AWAs were approved by the OEA covering a total of 1,436 employers.

***Technical requirements of AWAs:***

For an AWA to have legal effect under the Workplace Relations Act 1996 one of the following must apply:

- the employer is a constitutional corporation;
- the employer is the Commonwealth;
- the primary workplace of the employee is in a Territory;
- the employer and employee are in Victoria;
- the employer is an unincorporated employer in Queensland (other than a State Government employer), and is bound by a federal award;
- the employer is a waterside employer, the employee is a waterside worker, and the employment is in connection with interstate/overseas trade or commerce; or
- the employee is a maritime worker or a flight crew officer, and the employment is in connection with interstate/overseas trade or commerce.

*An AWA must include:*

- the model anti-discrimination clause ; and
- a dispute resolution procedure.

*An AWA cannot require either the employer or employees to keep its contents confidential.*

*The additional approval requirements for an AWA are that:*

- the AWA contains the model anti-discrimination clause;
- the AWA contains a dispute resolution procedure;
- the AWA does not contain provisions requiring the parties to keep its contents confidential;
- the employer gave the employee a copy of the AWA at least the required number of days before the employee signed the AWA;
- the employer explained the effect of the AWA to the employee between the time the employee first received a copy of the AWA and the time when the employee signed the AWA;
- the employee genuinely consented to making the AWA; and in a case where the employer failed to offer an AWA in the same terms to all employees doing the same kind of work – the employer did not act unfairly or unreasonably in failing to do so if you do not offer an AWA in the same terms to all employees doing the



same kind of work, you will need to provide reasons for not doing so (for example, differences in performance or skill levels).

To have legal affect, AWAs must be approved by the Employment Advocate.

An AWA completely displaces any federal or state award or state agreement, which would otherwise cover the employee concerned. However, an AWA may include the provisions of an existing award or agreement, which then become part of the AWA. Some businesses and their employees address one key issue through an AWA and include the provisions of the relevant award to cover other terms and conditions of employment. Others address a number of issues or opt to make completely new arrangements entirely tailored to their needs.

An AWA operates subject to any State law dealing with occupational health and safety, workers' compensation or apprenticeship. However, an AWA overrides terms and conditions of employment specified in any other State law that are different from those in the AWA. With regard to Federal law, an AWA cannot override conditions of employment specified in Commonwealth laws that apply to an employee, nor can an AWA take away any rights that an employee has under Commonwealth laws. (OEA Website 30/7/1999)