

Ms Jasmin Leigh Smith

5<sup>th</sup> August 2005

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

**BY EMAIL:** [eet.sen@aph.gov.au](mailto:eet.sen@aph.gov.au)

Dear Sir / Madam,

**RE: SUBMISSION TO THE SENATE EMPLOYMENT, WORKPLACE  
RELATIONS AND EDUCATION REFERENCES COMMITTEE**

**INQUIRY INTO WORKPLACE AGREEMENTS**

I make this submission to the Committee as a young retail and hospitality worker who has experienced some of the very worst aspects of the Government's existing workplace legislation and I urge the Committee to recommend against the retention of Australian Workplace Agreements in any form whatsoever. I am deeply disturbed that the Government considers these Agreements to be in the interests of either employees or the broader Australian community.

I appeal to the Committee to consider my experience as an 18 year old casual shop assistant who had recently started a job at Krispy Kreme Penrith in 2003. At the time I thought it was an exciting new opportunity and I was pleased to be working for a brand new company opening for the first time in Australia.

In July / August 2003, as an 18 year old casual shop assistant, I was being paid **\$11.63 per hour**, not including penalties, loadings or allowances. I have since become aware that this was the minimum Award rate payable under the Shop Employees' (State) Award (NSW).

In July 2003 my employer decided to "offer" Australian Workplace Agreements to all the employees at Krispy Kreme Penrith. My Agreement was called the ***Krispy Kreme Retail Workplace Agreement 2003 – All hours Team Member***. Store management and human resources held a meeting of team members to distribute the Agreements, made a presentation and made the proposal sound enticing and beneficial. I initially thought that I would be better off if I signed the Agreement.

In the following weeks, whilst we all considered the Agreements, I became aware that the retail union, the SDA, was recommending that employees reject the Agreements. I was not a union member and was unsure about what to do. I spoke with some work colleagues who explained that the Agreement would remove all penalties for late night and weekend work and reduce many other Award entitlements,

including rostering conditions, uniform allowances, annual leave loading, public holiday entitlements and overtime entitlements.

I am aware that the union, acting on behalf of a handful of us, was able to make some small improvements to the proposed Agreements. The changes were minor. Following a meeting held between the union and the company, the union advised that the changes were not significant and that for the vast majority of employees working nights and weekends we would remain worse off if we signed the Agreements. The union also advised that the Company's legal representative had indicated that it was prepared to make no further changes and that the Agreements were now on a take it or leave it basis. The union said that it understood the pressure that many of us were under to sign the Agreement and would support the choice any employee made including any employee who refused to sign the Agreement.

I was very concerned and I spoke with my mother for advice after collecting a copy of a bulletin from the union explaining its view. I decided that I preferred not to sign the Australian Workplace Agreement and to remain on the Award.

In the meantime, my Manager approached me on every shift to ask where was my signed Agreement. My mother approached the Manager to request more time for me to seek further advice from the union. He refused this request and made it clear that I was expected to return the signed Agreement by the deadline and that no extensions or exceptions would be made. He made it clear to me that if I did not sign the Agreement there was no guarantee of hours in the future.

As a casual employee with only a few months service I felt I had no choice. I felt pressured and bullied into signing the Agreement because store management made it clear that I had diminished work prospects in the future if I failed to sign it immediately. I am aware that many of my work colleagues felt the same way but almost all agreed to sign the document due to the risk of losing work.

Having signed the Agreement I remained employed and paid as a casual employee.

Under the Australian Workplace Agreement I received less pay, for the same hours of work, than I would have been paid under my Award. I lost the following entitlements that I regularly received as a casual employee prior to the introduction of the Australian Workplace Agreements:

- overtime rates of pay between 12 midnight and 6 am;
- fixed Saturday loadings;
- 50% penalty rates for Sunday work; and
- uniform allowance.

I was stunned to discover later that not only had I lost all these standard Award benefits but I also suffered a pay cut on my base hourly rate of pay. Under the Australian Workplace Agreement I was paid a lower hourly rate of pay for every hour that I worked compared to what I had previously received under the Award. My new

hourly rate of pay under the Australian Workplace Agreement in September 2003 was **\$10.85 per hour**. This was a **9.3% wage cut**, not including the loss of other entitlements.

I did not receive any substantial benefits in return for this loss of pay. As a casual employee I was not entitled to sick leave, annual leave, redundancy, notice of termination, additional hours (overtime), bereavement leave or jury service.

The overtime rates I used to be paid for work performed before 6am and after 12 midnight were no longer payable. The penalties and fixed loadings for weekend work were no longer paid.

My hours of work were also substantially worse under the Australian Workplace Agreement. On the day that Penrith celebrated the minor premiership in 2003, I worked 16.5 hours at the standard \$10.85 ordinary hourly rate of pay without any overtime, penalties or loadings and at a rate less than the Award.

I finally wish to draw to the Committee's attention the reason that I no longer work for Krispy Kreme Australia Pty Ltd. In November / December 2003, I made a written complaint regarding sexual harassment by a Manager at Krispy Kreme Penrith. I felt that the Manager, approximately 30 years older, had made inappropriate advances of a sexual nature toward me in connection with work. These advances had made me very uncomfortable. I made a written complaint to head office.

Whilst awaiting the outcome of the Company's investigation, I made a request to another Manager at the site to provide me with a new roster working at different times to the Manager whom I made the complaint against, whilst the matter was being resolved. This request was refused.

The written complaint was also not acted upon. The person responsible for investigating the complaint left employment with the Company during the investigation and no one followed up the complaint. I was left working side by side with the Manager of whom I had complained.

My Australian Workplace Agreement provided no satisfactory outlet for me to pursue my complaint. It contained a non-binding mediation provision. I had no confidence in the integrity of a Company appointed and paid mediator to make a non-binding recommendation that was in my best interests. The Australian Workplace Agreement should have provided for any workplace complaint or dispute to be referred to an independent third party, such as the Australian Industrial Relations Commission or the New South Wales Industrial Relations Commission (which I could previously access under the Award), and that the complaint could be resolved by a binding arbitrated decision if I, or the Company, was dissatisfied with any recommendation it made.

Instead, I was left to work side by side with the same older Manager who had sexually harassed me without any investigation, follow up or consequences.

Committee members should appreciate why I resigned in the circumstances.

Committee members should also understand why I now implore you to scrap Australian Workplace Agreements. My experience as a young casual worker working at Krispy Kreme Penrith was that I could not exercise a free and open choice to remain on my Award, that I suffered a pay cut for every hour that I worked and that I could not access an independent umpire to resolve my workplace grievances.

I am appalled to read that the Government suggests that Australian Workplace Agreements are about providing employees with choice. This assertion is simply not true and does not reflect how they were introduced at my workplace.

I am also appalled to read that the Government suggests that workers on Australian Workplace Agreements are paid more. If any Senator on the Committee is interested, I have retained the pay packets that demonstrate I was paid less for every hour I worked after signing my AWA.

I urge the Committee to reject any further changes to workplace legislation and to recommend the elimination of Australian Workplace Agreements.

I wish you all the very best in your deliberations.

Yours sincerely,  
Jasmin Smith  
5 August 2005