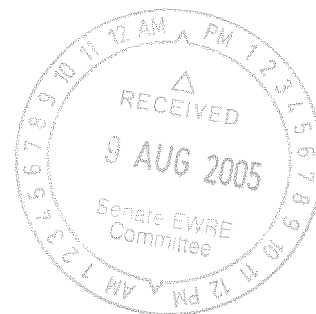


5 August 2005

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



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

Dear Sir / Madam,

SUBMISSION
INQUIRY INTO WORKPLACE AGREEMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BEST CASE SCENARIO

Kripsy Krema AWA Wages

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

\$658.750

Shop Employees (State) Award Wages

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

\$717.369

\$58.619

WORST CASE SCENARIO

Kripsy Kreme AWA Wages

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

\$658.750

Shop Employees (State) Award Wages

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

\$977.782

\$319.032

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

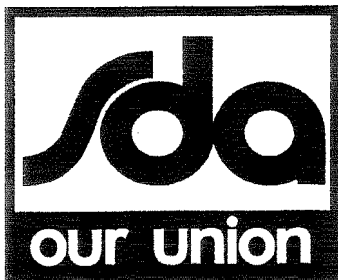
During the 12 months that I worked for Krispy Kreme, I was denied a free choice of my wages and conditions of employment (my award), I suffered a pay cut compared to the wage otherwise payable for the same work performed under that award, I worked long hours without the payment of any overtime, I was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

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

I look forward to reading the Committee's recommendations.

Yours faithfully,

Thea Birch Fitch



Union News

58 / 03

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

28 July, 2003

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

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

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

MODEST WAGE INCREASE IN RETURN FOR CUTS TO KEY CONDITIONS

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

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

YOUR RIGHTS AND ENTITLEMENTS

The following matters are very important to consider:

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

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

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

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

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

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

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

WHAT ELSE IS MISSING IN THE MIDDLE?

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

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

WHAT CAN YOU DO?

Appoint the SDA as your bargaining agent.

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

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

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

ITS EASY

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

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

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

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

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



Greg Donnelly
BRANCH SECRETARY-TREASURER