

# Australia: Tribunal to hear challenge to union-company wage-cutting deal

Oscar Grenfell  
16 May 2017

The Fair Work Commission, the federal government's industrial tribunal, ruled on Friday that it will proceed to a full-bench hearing in the legal challenge brought by Penny Vickers, a Brisbane supermarket worker, to a 2011 agreement between Coles and the Shop Distributive and Allied Employees Association (SDA), the country's largest retail union. The deal slashed wages for thousands of low-paid workers.

The case was the subject of nervous commentary in the financial press last month, with business figures, Labor and Liberal-National politicians and union bureaucrats all warning that if the agreement is overturned, it will threaten the entire framework of enterprise bargaining that has been used to decimate the jobs, wages and conditions of workers for the past 25 years.

At a Fair Work Commission hearing on Thursday, lawyers for Coles, a supermarket giant, and the SDA, came together in a bid to block the case from proceeding, arguing that it was not in the "public interest."

On Friday, Fair Work Commission Vice-President Adam Hatcher rejected this argument, stating, "I consider that the number of employees to which the 2011 agreement applies is so large as to make the question of the termination of the 2011 agreement a matter of public significance..." No date has been set for the full-bench hearing.

The ruling was a blow to the company, and the union, which have worked to quash the legal challenge since it was brought last year, with both seeking to delay its progression through the industrial tribunal and prevent a full bench hearing. There are also suggestions that Coles and the SDA have sought to prevent the disclosure of the impact of their agreement on thousands of workers.

In comments cited in the *Sydney Morning Herald*, Vickers warned against attempts by the company and the union to present a small group of workers who would back the 2011 agreement. "There is no utility or point in

hearing from 85 like-minded, handpicked, above-award-pay day workers, out of Coles' workforce of over 75,000," Vickers said. "It would be a waste of time and resources."

Coles and the SDA reverted to the 2011 deal after another worker, Duncan Hart, prosecuted a successful challenge to a 2014 agreement, which also included pay levels below award-mandated rates, in a 2015 Fair Work Commission case.

According to an investigation last year by Fairfax Media, some 43,000 Coles workers since 2011 have been paid less than they were owed as a result of the two agreements. The average underpayment is estimated at \$1,500 a year, a substantial sum given that many of supermarket's employees work on a casual or part-time basis, with annual wages as low as \$10,000–\$15,000. The wage-cutting saved Coles up to \$100 million a year.

Vickers is arguing that the 2011 agreement fails the "Better Off Overall Test" (BOOT) in current industrial legislation, which supposedly requires that no worker be worse-off as a result of an enterprise agreement. Her invocation of the clause, routinely violated by the major companies and the unions, has triggered calls from Liberal-National politicians, former Labor figures and union officials to remove BOOT from legislation.

The line-up of the SDA with Coles, against one of the workers they falsely claim to represent, is a graphic expression of the thoroughly corporatised character of the trade unions, which function as an arm of company management, enforcing pay cuts and suppressing industrial, political and legal opposition from workers.

The Fairfax Media investigation found that the SDA had signed similar agreements with a host of major employers. Under a 2013 deal between the union and fast-food chain McDonald's, workers reportedly receive almost one-third less than the award-mandated minimum wage. Total underpayment is estimated at around \$50 million per year,

with fast-food employees who earn as little as \$10 an hour among those hit by the deal.

Around 60,000 employees at Woolworths,' Coles' main competitor, have also allegedly been underpaid by tens of millions of dollars as a result of an SDA agreement. Fairfax claimed workers at Hungry Jacks, another fast food outlet, have been underpaid by up to \$5,000 a year, while their counterparts at KFC have also been affected.

All up, around 250,000 workers, most of them young and impoverished, have been covered by SDA wage-cutting agreements. Many of the deals have slashed or abolished night and weekend penalty wage rates, upon which retail and fast food workers have traditionally relied. In other words, if Vickers' challenge is successful, it could have far broader implications.

It is not just the SDA, that is implicated in Coles' wage-cutting deals. The Australian Workers Union (AWU), the country's largest union, also sought to have Vickers' challenge thrown out of court last week, and was a party to the 2011 and 2014 Coles agreements.

All of the major unions, including the national umbrella organisation, the Australian Council of Trade Unions, have maintained a stony silence on the case brought by Vickers. They are fearful that it threatens a host of pro-business arrangements and deals, which have netted the union bureaucracy substantial sums of money.

The AWU, for instance, including when it was headed by current Labor Party leader Bill Shorten, signed a series of pro-business agreements slashing wages and conditions for cleaners and other low-paid workers.

Other unions, such as the Construction Forestry Mining Energy Union (CFMEU), promoted as "left-wing" and "militant," have also enforced real wage cuts. The CFMEU has had close ties to property developers involved in "phoenix operations," in which the business is liquidated, and employee awards and entitlements withheld. The union also imposed a 5 percent pay cut affecting up to 900 workers at the Maryvale paper mill in Victoria's Latrobe Valley in February.

A spate of recent cases have made clear that underpayment is the new norm, either directly enforced by the unions, or as a byproduct of their collaboration in the destruction of secure, full-time work over the past three decades, which has spurred a rise and rise in casual, low-paid employment. To cite only a few examples:

? In May operators of six Little Vienna sandwich chain stores in Sydney were fined in the Federal Circuit Court after it was alleged some employees were underpaid

\$111,781 between December 2012 and April 2015. The migrant workers received between \$11 and \$13 an hour.

? Last month Fairfax reported that celebrity chef, George Calombaris, had allegedly underpaid around 200 workers in his high-end restaurants by a total of \$2.6 million. Calombaris said the underpayment was a result of "poor processes in classifying employees."

? Also in April, Guardian Property Services, a major cleaning company, agreed to compensate underpaid workers by up to \$50,000 each. The move followed allegations that cleaners had been given a flat-rate of \$14 an hour and were denied entitlements, including superannuation and annual leave.

Other cases have emerged at restaurants and cafes across the country, along with seafood businesses, among cleaners and even security guards at state-owned art galleries in Victoria. The reports come amid the lowest national wage growth since records began in 1969, of just 1.8 percent across the private sector in 2016.

The wage theft, which amounts to a vast redistribution of wealth from the poorest sections of the working class to the corporate and business establishment, is a direct product of the enterprise bargaining system set in place and defended by successive Labor governments and the trade unions.



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