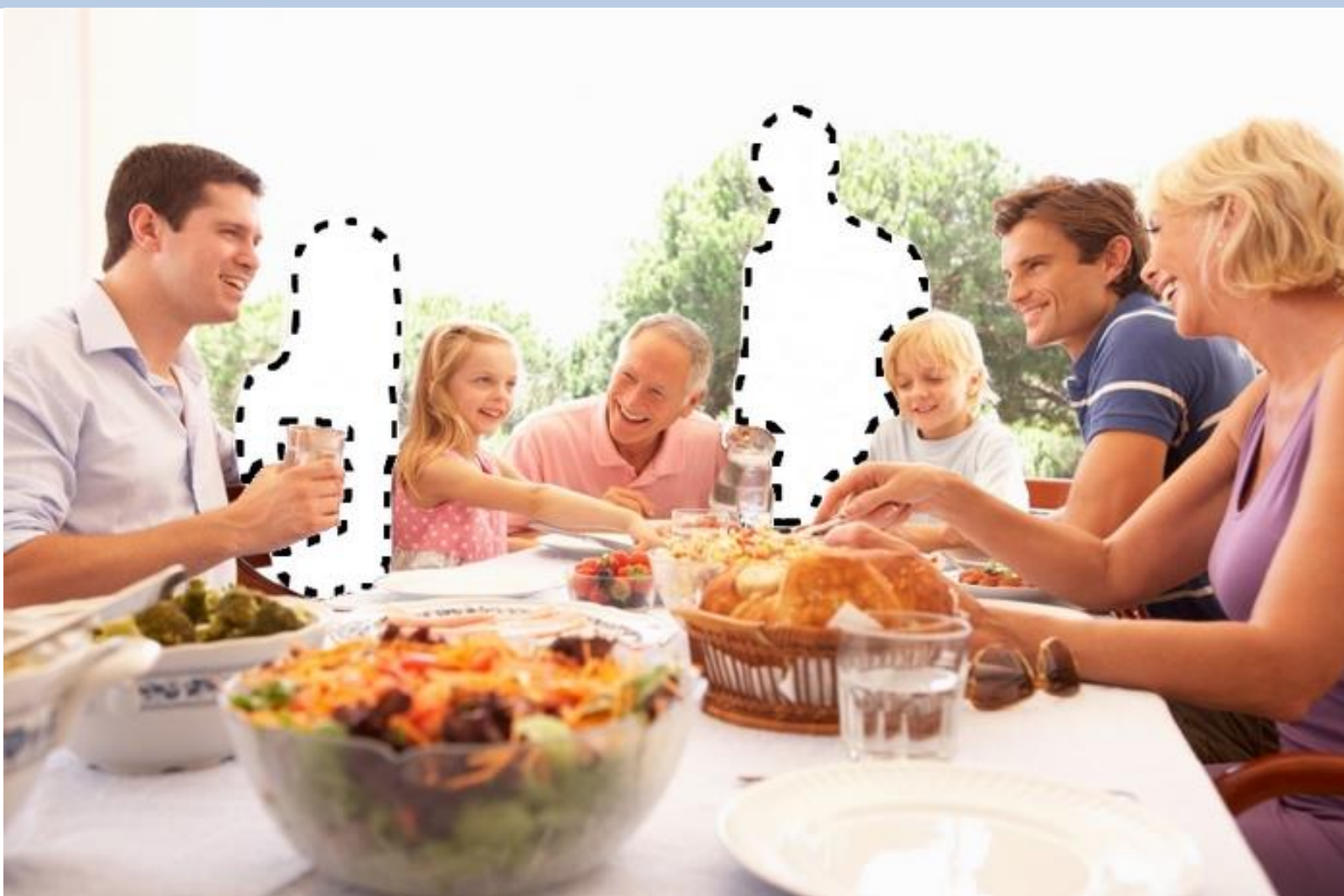


SUBMISSION

REVIEW OF THE 2015 AMENDMENTS TO THE
RETAIL TRADING ACT 2008
MARCH 2017



Shop, Distributive and Allied Employees' Association,
Newcastle and Northern Branch

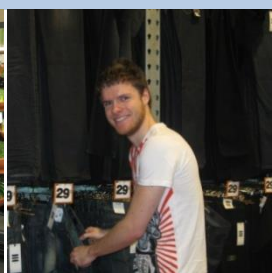


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1. INTRODUCTION

- 1.0.1 The Shop, Distributive and Allied Employees' Association, Newcastle and Northern Branch ("the Union") represents the interests of over 14,000 retail, fast food and warehousing and distribution employees in Newcastle, the Central Coast and the Hunter Valley.
- 1.0.2 The Union makes this submission to the Review on behalf of directly affected retail and fast food employees.
- 1.0.3 The Union strongly opposes the continuation of the Boxing Day trading trial and supports five (5) restricted trading days, specifically Good Friday, Easter Sunday, Anzac Day, Christmas Day and Boxing Day.
- 1.0.4 Whilst the Union supports appropriate measures undertaken to reduce needless complexity and / or genuine uncertainty, which may arise under the *Retail Trading Act 2008* ("the Act"), this may be achieved through a blanket prohibition on Boxing Day trading throughout NSW with appropriate exemptions only for the Sydney CBD.
- 1.0.5 Public holidays remain significant cultural and religious occasions in the life of the broader Australian community. They are occasions when the vast majority of Australians share increasingly rare time with their immediate family, celebrate together with friends and relatives and commonly express and observe their religious beliefs.
- 1.0.6 They should be fully protected at law and should be observed in a manner which provides a meaningful benefit to employees engaged in seven day industries such as retail. The restricted trading day status of Boxing Day under the Act formerly facilitated this objective. The trial undermined this status and relegated Boxing Day to just another shopping / work day.
- 1.0.7 For most retail workers Good Friday, Easter Sunday, Anzac Day (half day), Christmas Day and Boxing Day are the only guaranteed days in the year they can plan to make leave arrangements. This is due to expansive employer rostering discretion, the use of annual leave "blackout periods" and the increasing span of trading hours directly associated with the sales which occur at these times of the year.
- 1.0.8 These days also commonly, if not exclusively, fall on days in the midst of school holidays when working parents, particularly the high proportion of working mothers in the industry, depend upon the practical effect of restricted days and voluntary work arrangements on these public holidays to ensure they can spend guaranteed time with their children.

- 1.0.9 It is not unreasonable that there be limits or special conditions applicable to commercial activity on these 4 ½ public holidays (e.g. voluntary work arrangements, and the restricted trading regime under the *Retail Trading Act 2008*).
- 1.0.10 Prior to the 2015 amendments the review of retail trading hours in 2007/2008 bestowed significant benefits to big retailers and large shopping centre landlords. Not only did business secure the complete deregulation of retail trading hours on Sundays but they were also given deregulated trading on New Year's Day, Australia Day and the afternoon of Anzac Day (half day) which were previously closed trading days under the former legislation, the *Shops and Industries Act 1962*. Retailers were gifted with a net 14% increase in unregulated trading. Retail workers were left with the crumbs from the table. Almost 99% of days in the year are now unregulated for retailers to ply their wares as they see fit.
- 1.0.11 The Union urges the Review to consider this context when addressing the issue of balance. The current regulatory framework is hideously unbalanced. Retailers can trade on an unrestricted 24/7 basis on almost 99% of days in the year.
- 1.0.12 Therefore, the Union respectfully submits that the Boxing Day trading trial should be discontinued and the legislative scheme must better facilitate the ability of retail employees to fully participate in the rich and diverse experiences of life, including:
- Raising children and sharing valued time with the immediate family;
 - Spending time together with friends and relatives;
 - The expression and observation of religious beliefs.
 - Participating in community activities, including volunteering;
 - Participating in sport and recreation;
 - Improving knowledge and skills through further education and study.
- 1.0.13 The deregulation of trading hours has progressively undermined the ability of retail employees to attend to these responsibilities and to participate in these activities, all of which are beneficial to a functional and balanced society. Deregulation has come at a significant cost to many in the workforce. A real tension has emerged for those in the community, including retail employees, who are required to work at times which have traditionally been reserved or more readily available for these responsibilities and activities.¹ The Union submits that Boxing Day trading has further eroded the remaining minimal prohibitions which formerly existed under the trading hours' legislation.
- 1.0.14 The community remains uneasy with the increasing intrusion of work into the time available for employees to devote to their families and / or participate in these activities.

¹ "The Work / Life Collision", Barbara Pocock, Federation Press June 2003

- 1.0.15 The community expects that Government ensures a fair balance is maintained between business, consumer and employee interests. We have gone past a tipping point and that balance no longer exists.
- 1.0.16 The Union respectfully suggests that solely commercial interests, which drove the Boxing Day deregulation agenda, have neither their employees' nor the wider community's best interests at heart.
- 1.0.17 Our social fabric should consist of a healthy balance between the commercial activity of business interests and our private lives, which consist of family, community and religious observance. The restoration of a fair and proper recognition of public holidays under New South Wales retail trading hours' law should facilitate this balance and not act as an impediment.
- 1.0.18 The Union recommends that:
- The Boxing Day trading trial be discontinued;
 - Boxing Day be restored as a restricted trading day;
 - To the extent that there is alleged complexity or confusion arising from pre-existing arrangements, such complexity may be resolved through the dismantling of previous tourist trading zones;
 - The boundaries of any proposed Sydney CBD trading precinct be narrowly defined in consultation with our sister Union, the Shop, Distributive and Allied Employees' Association, New South Wales Branch; and
 - Anzac Day be declared a restricted trading day for the full day.

1.1 THE REVIEW

- 1.1.1 The Union welcomes the Review as an important opportunity for working people to express their views on the impact of the Boxing Day trading trial.

Terms of the Review

- 1.1.2 In correspondence dated 16 February 2017 stakeholders were invited to provide *"information about the experience of you, your organisation or your business during the last two Boxing Days where the trading exemption was available."*
- 1.1.3 Specifically, parties were invited to address:
- The success or otherwise of Boxing Day trading for retailers, consumers and employees;

- The effectiveness or otherwise of mechanisms or policies that may have been in place to ensure confidence that staff were not coerced or harassed to work; and
 - Pressure, if any, placed on retailers by their lessors to open their business on restricted trading days and how that was resolved.
- 1.1.4 In this submission the Union shall comprehensively address the first two matters. However, it should be noted that it would be remiss for the Union not to address those additional grounds and reasons advanced by the Government since 2011 in support of Boing Day trading, namely complexity.
- 1.1.5 Any regulation will be asserted by some to be “complex”. Whenever reasonable, fair and defensible regulation is implemented there will be some who argue it is “complex”. The ideology which underpins this assertion is that the market should be free and unfettered and, therefore, regulation of any type is unwelcome and creates “complexity”. The only “complexity”, in reality, is that regulation imposes a restriction on activity which they would otherwise prefer was unregulated.
- 1.1.6 The so-called “complexity” only arises as a consequence of the constraints imposed by Parliament acting to balance the interests of retail workers, small businesses and the community generally against the limited commercial interests of retailers and large shopping centre landlords.
- 1.1.7 Policy makers must bear in mind that *“one person’s red tape is another person’s safety net”*.

1.2 THE SDA

- 1.2.1 The Union is a branch of the Shop, Distributive and Allied Employees’ Association, which has over 215,000 members nationally.
- 1.2.2 The Union also has a state registered counterpart, the Shop Assistants and Warehouse Employees’ Federation of Australia, Newcastle and Northern, New South Wales.
- 1.2.3 The Union is the largest trade union in Newcastle, the Central Coast and the Hunter Valley.
- 1.2.4 The Union has coverage of a wide range of occupational areas, most notably extending throughout the retail and fast food industries. The vast majority of members are engaged in the retail industry. Members are employed to work across the full range of retail formats.
- 1.2.5 The Union has a significant membership with major retailers, big box retail, chain stores and with most national retailers. Given the considerable number of employees who are members of the Unions working in shops, the Union submits it is well placed to make authoritative comment on the impact such reform would have on the interests of retail employees.

- 1.2.6 The Union is committed to promoting, improving and safeguarding the interests of its members industrially, socially, legally, intellectually and otherwise by all lawful means.
- 1.2.7 The restoration of fair and balanced trading hours arrangements in New South Wales would serve to ensure that all retail employees are provided with the opportunity to both work and live. It is certainly arguable that the trading hours pendulum has already swung too far and that retail employees, in particular, have lost any meaningful ability to control their hours of work, in large measure due to the rampant extension of trading hours in New South Wales over the last two decades, most recently in 2015 when retailers once again clawed further ground.
- 1.2.8 The Union remains strongly opposed to any further extension of trading hours, particularly with respect to the few remaining days left in the calendar where trading is restricted for good public policy reasons. The restriction on Boxing Day trading should be restored and extended.

1.3 EXTENDED TRADING HOURS

- 1.3.1 The Union's experience is that longer trading hours in the retail industry leads to the following consequences: -
- There has been a reduction in full-time employment and an increase in part-time and casual employment in order to staff the stores across the new span of opening each week.
 - There has been an increase in costs to retailers in staffing their stores over the expanded hours but no net increase in retail sales (as a direct consequence of the extended hours). This means the profit margins enjoyed by retailers are squeezed or prices are increased (or both).
 - If one retailer manages to increase sales as a result of longer opening hours, it is at the expense of other retailers who previously had this business. As a result, some retailers, usually small businesses, are driven out of the industry.
 - Retailers attack penalty rates to reduce their costs even if they originally agreed to keep these penalty rates as a means of securing Government agreement to legislate longer shop opening hours. To the extent that retailers are successful in reducing penalty rates, shop assistants lose income as a result.
 - Retailers will require shop assistants to work at the newly de-regulated times of opening, even if they originally agreed to voluntary work at these times to secure the Government's acceptance of the longer trading hours. Shop assistants are then again the losers, being forced to work at unsocial times.
- 1.3.2 In the light of the above, no case for longer retail trading can be substantiated, particularly because we already have seven days per week trading in NSW.

2. PUBLIC HOLIDAYS

- 2.0.1 Public holidays remain significant cultural and religious occasions in the life of the broader Australian community. They are occasions when the vast majority of Australians share increasingly rare time with their immediate family, celebrate together with friends and relatives and commonly express and observe their religious beliefs.
- 2.0.2 They should be fully protected at law and should be observed in a manner which provides a meaningful benefit to employees engaged in seven day industries such as retail. The restricted trading day status of a very limited number of public holidays, Good Friday, Easter Sunday, Anzac Day, Christmas Day and Boxing Day, comes some way toward facilitating this objective.
- 2.0.3 For most retail workers these are the only guaranteed days in the year they can plan to make leave arrangements. This is due to expansive employer rostering discretion, the use of annual leave “blackout periods” and the increasing span of trading hours directly associated with the sales which occur at these times of the year.
- 2.0.4 These days also commonly, if not exclusively, fall on days in the midst of school holidays when working parents, particularly the high proportion of working mothers in the industry, depend upon the practical effect of restricted days and voluntary work arrangements on these public holidays to ensure they can spend guaranteed time with their children.
- 2.0.5 It is not unreasonable that there be limits or special conditions applicable to commercial activity on these 5 public holidays (e.g. the restricted trading regime under the *Retail Trading Act 2008*).
- 2.0.6 In the past three decades retailers have successfully sought to expand their commercial activities into the time which has been traditionally reserved for family and community activities, our weekends and the majority of public holidays. They have done so with little or no cost. Retailers have also successfully convinced the industrial umpire in NSW (and federally under the modern award system) to increase the span of hours to reflect the broader trading hours which they have acquired. Employees may be lawfully directed to work their ordinary rostered hours at these times under the relevant industrial instruments which apply. It is not overtime and it is not shiftwork.
- 2.0.7 In respect of Boxing Day which essentially is the subject matter of this review, the vast majority of industrial instruments that cover retail employees do not contain a guarantee of voluntary work on this day and, as this submission shall establish, the fig-leaf “freely elect” to work provisions under the 2015 amendments have been ineffectual on a widespread basis.

2.1 INDUSTRIAL ARRANGEMENTS

2.1.1 Within the retail industry there are four broad categories of industrial arrangements which address voluntary work on public holidays.

- NES only;
- NES & Modern Award;
- NES & Agreement (with improvements to voluntary work arrangements); and
- NES & Agreement (with no improvements ie. NES default).

These arrangements arise as a consequence of the interaction of the public holiday provisions of the National Employment Standards (“NES”) with the various Awards and Agreements which apply. Most importantly the NES does not guarantee voluntary work on public holidays.

2.1.2 The NES provides:

“Employee entitled to be absent on public holiday

(1) An employee is entitled to be absent from his or her employment on a day or part-day that is a public holiday in the place where the employee is based for work purposes.

Reasonable requests to work on public holidays

(2) However, an employer may request an employee to work on a public holiday if the request is reasonable.

(3) If an employer requests an employee to work on a public holiday, the employee may refuse the request if:

(a) the request is not reasonable; or

(b) the refusal is reasonable.

(4) In determining whether a request, or a refusal of a request, to work on a public holiday is reasonable, the following must be taken into account:

(a) the nature of the employer’s workplace or enterprise (including its operational requirements), and the nature of the work performed by the employee;

(b) the employee’s personal circumstances, including family responsibilities;

(c) whether the employee could reasonably expect that the employer might request work on the public holiday;

(d) whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, work on the public holiday;

(e) the type of employment of the employee (for example, whether full-time, part-time, casual or shiftwork);

(f) the amount of notice in advance of the public holiday given by the employer when making the request;

(g) in relation to the refusal of a request—the amount of notice in advance of the public holiday given by the employee when refusing the request;

(h) any other relevant matter.”²

2.1.3 This provision does not provide an unfettered right to employees to refuse to work on public holidays. Their voluntary work right is contingent upon the reasonableness of the employer’s request for them to work if so required and the reasonableness of their refusal if a reasonable request has been made by the employer. In short, federal legislation does not guarantee voluntary work on public holidays. This is important, as it establishes that the minimum safety net absent further protection under State trading hours regulation is deficient in this regard.

2.1.4 The relevant modern awards which operate in the industry are primarily the General Retail Industry Award 2010, the Fast Food Industry Award 2010, the Pharmacy Industry Award 2010 and the Vehicle Manufacturing, Repair Services and Retail Award 2010. The relevant provisions of these awards do not supplement the voluntary work rights conferred under Section 118 of the Act.

2.1.5 During enterprise agreement negotiations with retailers since 2006 under the current *Fair Work Act* 2009 and its predecessor, the *Workplace Relations Act* 1996 as amended by WorkChoices (which contained a similar provision) , bargaining has naturally focused on the public holiday provisions of the NES and the relevant awards. Retail employers have invariably refused to interpret these provisions in a manner which would grant retail workers an unfettered right to refuse to work on public holidays. Hence, enhancing the voluntary work rights of employees on public holidays has been left to the cut and thrust of bargaining with variable outcomes ensuing. This is not ideal as the Union submits that the general prescription should guarantee this right.

2.1.6 The variability of these outcomes has been the result of a mixture of factors including the existing Agreement provisions, the historical bargaining context, the nature and size of the enterprise and the overall bargaining package (e.g. wages, penalties, rostering conditions etc.). The variability is briefly outlined by the examples shown in the table below :

Voluntary Work	Employer	Instrument	Provision
Yes	Coles Supermarkets	Coles Supermarkets Australia Pty Ltd and Bi-Lo Pty Limited Retail Agreement 2011	Clause 6.14.5
Yes	Woolworths Supermarkets	Woolworths National Supermarket Agreement 2012	Clause 7.9

² Section 118 of the *Fair Work Act* 2009

Limited	Bunnings	Bunnings Warehouse / Small Format Stores Agreement 2013	Clause 16.4
NES only	Myer	Myer Stores Agreement 2010	Clause 13.1 (Part 2 employees)

2.1.7 What is clear, however, from bargaining is the increasing determination of retailers by and large to wind back voluntary work rights in agreements where they already exist or to retain employer discretion over the matter, subject to the federal legislative framework, where voluntary work rights do not exist.

2.1.8 Rubbing salt into the wounds it is also clear that the so-called “freely elect” (voluntary) work rights conferred under the Act have not provided any additional protection for modestly paid, vulnerable retail workers. Significant numbers of retail workers who were entitled under the law to protection did not freely elect to work on Boxing Day and yet there have been no consequences whatsoever for any retailer responsible for opening for trade in contravention of the law.

2.2 PENALTY RATES

2.2.1 The recent decision of the Full Bench of the Fair Work Commission³ to reduce the penalty rate payable to retail and fast food workers who work on public holidays should also bear significant weight. The impact of the public holiday rate cuts is as follows:

Award	Full-time and part-time		Casual	
	Current	New	Current	New
General Retail Industry Award 2010	250%	225%	275/250%	250%
Fast Food Industry Award 2010	250%	225%	275%	250%
Pharmacy Industry Award 2010	250%	225%	275%	250%

2.2.2 This decision will have immediate effect from 1 July 2017 for all award covered retail, fast food and pharmacy workers.

2.2.3 For those workers currently covered by Enterprise Agreements, the next bargaining round will undoubtedly carry its own pressure for a commensurate cut to public holiday rates or put further downward pressure on wages.

³ 4 yearly review of modern awards – Penalty Rates [2017] FWCFB 1001, 23 February 2017
<https://www.fwc.gov.au/documents/decisionssigned/html/2017fwcfb1001.htm>

- 2.2.4 When NSW retail employers were gifted the right to trade on an unrestricted basis on Boxing Day the penalty rates paid on the public holiday was one of the features or advantages which retailers identified as a benefit which workers would enjoy in return for working on the day. It stands to reason that if retail employers are no longer legally obliged to pay the same public holiday rate then why should such employers continue to enjoy the same right to trade on the day?
- 2.2.5 In the Union's respectful submission, the NSW Government should review its 2015 decision and discontinue the Boxing Day trading trial on this ground alone.

3 THE ISSUES

3.1 VOLUNTARY WORK

3.1.1 The legislative framework which provides retail workers with voluntary work rights under the Act is set out below.

3.1.2 Section 4 of the Act provides:

“4 Shops to be closed on restricted trading days

(1) All shops must be kept closed at the following times:

(a) at all times on Good Friday,

(b) at all times on Easter Sunday,

(c) at all times before 1pm on Anzac Day,

(d) at all times on Christmas Day,

(e) at all times on Boxing Day.”

3.1.3 Section 8A of the Act provides:

“8A Shop not required to be closed on Boxing Day if staff freely elect to work

(1) A shop is not required to be kept closed on Boxing Day if the shop is staffed only by persons who have freely elected to work on that day.

(2) This section has effect despite any other provision of this Act and any other Act or law.”

3.1.4 Section 3A of the Act provides:

“3A Meaning of “freely elected to work”

For the purposes of this Act, a person has not freely elected to work on a day:

(a) if the person works on the day because the person has been coerced, harassed, threatened or intimidated by or on behalf of the occupier of the shop or on behalf of the bank, or

(b) merely because the person is rostered, or required by the terms of an industrial instrument, to work on that day.”

3.1.5 Following the 2015 amendments, and the introduction of Sections 3A and 8A above, the intention of Parliament was that during the two year trial shops must remain closed on

Boxing Day unless staffed only by persons who have freely elected to work on that day. The legislation went further to define “a person has not freely elected to work” to include a person who has been coerced, harassed, threatened, intimidated, rostered or required by the terms of an industrial instrument to work on Boxing Day.

3.1.6 The terms of the Act were clear and prescriptive so one would assume that if the legislation was operating as intended:

- All shops which opened for trade on Boxing Day did so only with staff who had freely elected to work; or
- There was minimal non-compliance and where such non-compliance occurred appropriate investigations were conducted and sanctions imposed.

3.1.7 Neither of these presumptions is accurate.

3.1.8 In early 2016 and 2017 the Union conducted detailed online surveys to gauge the impact of Boxing Day trading on its membership. The Boxing Day 2015 work survey was conducted early in 2016 and had 468 participants. The Boxing Day 2016 work survey was conducted early in 2017 and had 854 participants.

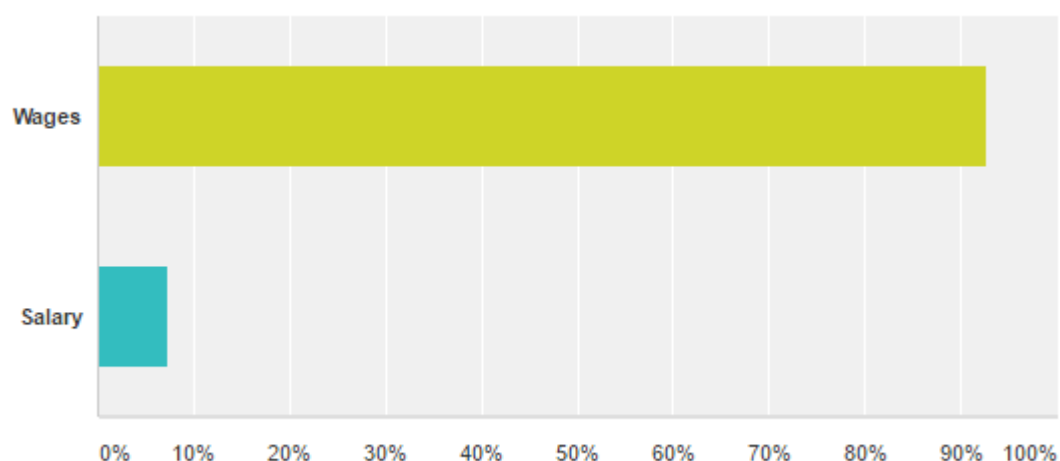
3.1.9 The detailed breakdown of the results of the two surveys follows:

Boxing Day 2015 work survey

3.1.10 Of the respondents:

92.7% were waged workers
7.3% were salaried workers

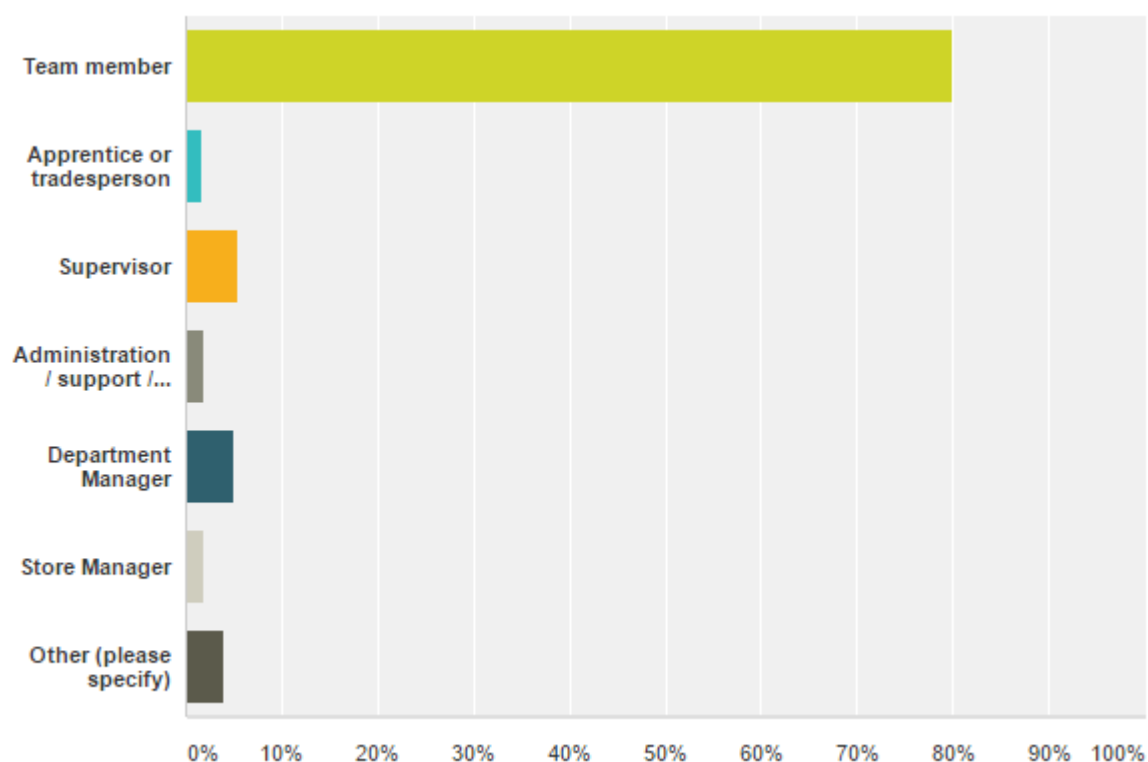
Table 1



Question: How are you paid?

The vast majority of respondents were shop assistants / team members (79.9%) followed by supervisors (5.5%), department managers (5.0%) and store managers (2.0%):

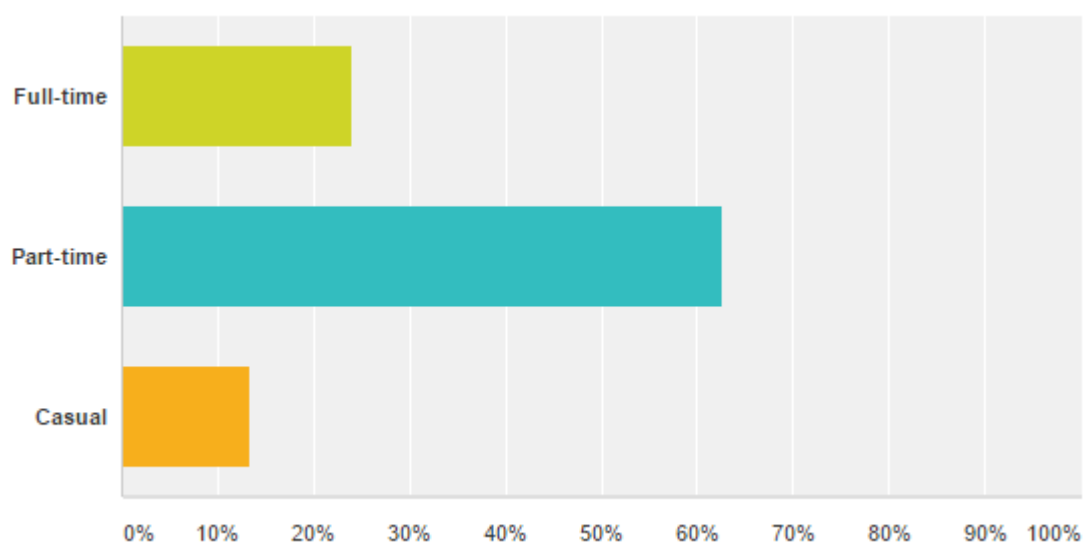
Table 2



Question: How would you describe your role?

24.0% were employed permanent full-time
 62.6% were employed permanent part-time
 13.4% were employed as casuals

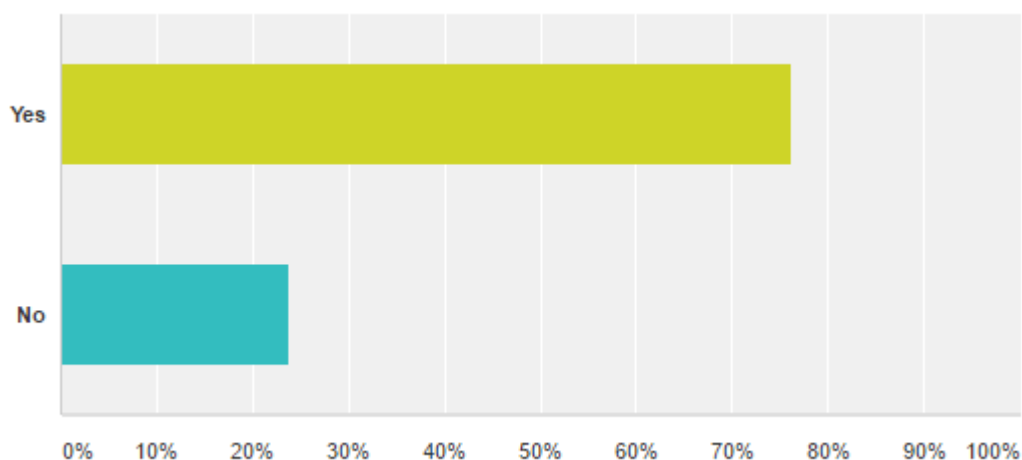
Table 3



Question: Your employment status?

3.1.11 Of those respondents who worked on Boxing Day 2015, **23.8% did not freely elect to work.**

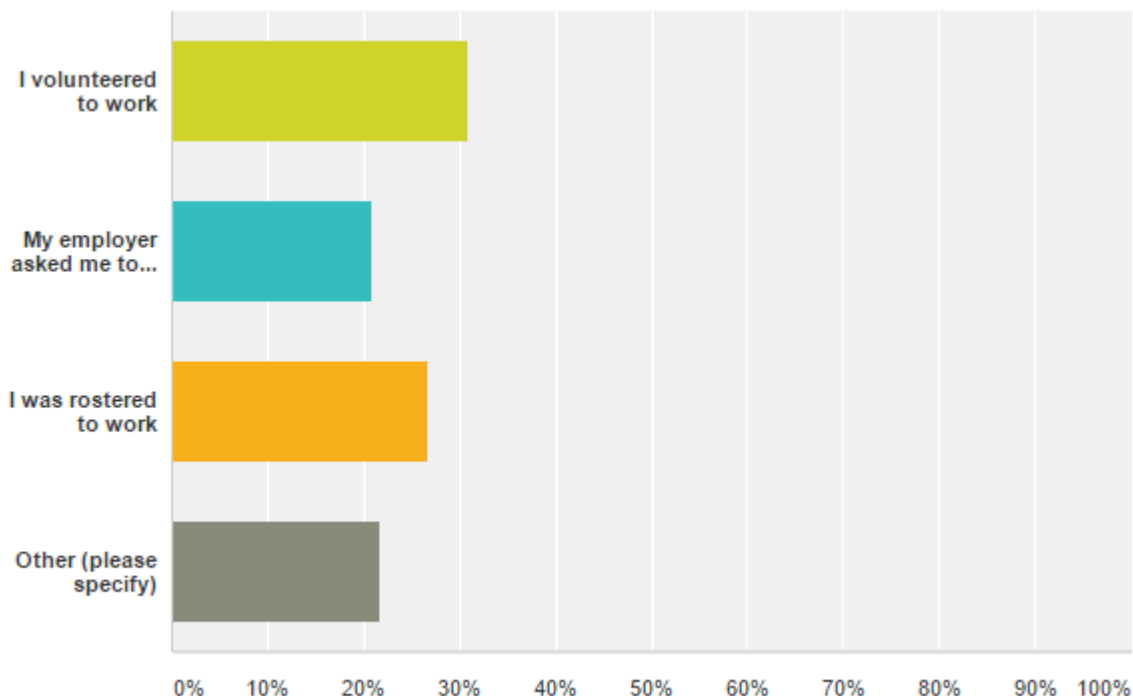
Table 4



Question: Did you freely elect to work?

3.1.12 Of those respondents who “freely elected to work” **more than one in every four workers (26.7%) nominated the main reason why they worked on Boxing Day was because they were rostered to work.** This suggests that the level of non-compliance is even more widespread.

Table 5



Question: What was the main reason why you worked on Boxing Day?

The total of those workers who state that they did not freely elect to work (Table 4 – “No”) in addition to those who worked because they were rostered to work (Table 5 – “I was rostered to work”) is **43.8% of those who worked on Boxing Day.**

3.1.13 Some of the individual responses (“Other”) are also instructive as they reveal the economic pressure and the power imbalance experienced by often young and vulnerable workers in the industry:

- “I haven’t been there long and I didn’t want to say no also I needed the money”
- “I worked boxing day to get new years day off”
- “I had initially declined to work on Boxing Day, but was asked a second time.”
- “There was no one else to do my department I felt like I should”
- “I asked not to work but manager was reluctant as not enough senior staff to work so I agreed to work first 3 hours so I could go home and have Xmas with family as we do not see them Xmas day”

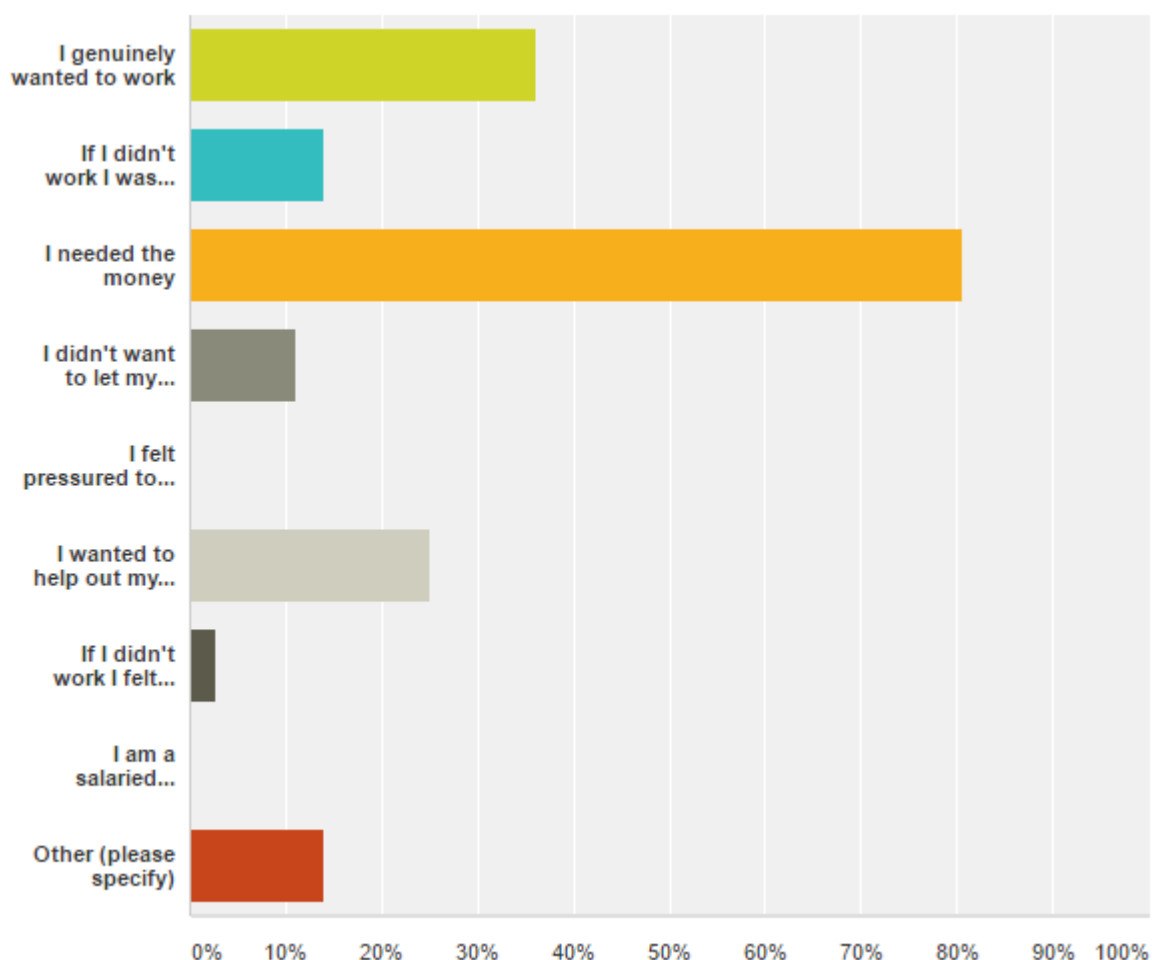
3.1.14 When those respondents who advised they had “volunteered to work” (Table 5) were probed further about why they volunteered the survey reveals:

80.6% of workers who “volunteered to work” reported that one of the reasons they did so was because they needed the money

13.9% of workers who “volunteered to work” reported that one of the reasons they did so was because they were concerned that they might not get shifts (or extra shifts) in the future

11.1% of workers who “volunteered to work” reported that one of the reasons they did so was because they did not want to let down their co-workers

Table 6



Question: Why did you volunteer to work on Boxing Day? (check all that apply)

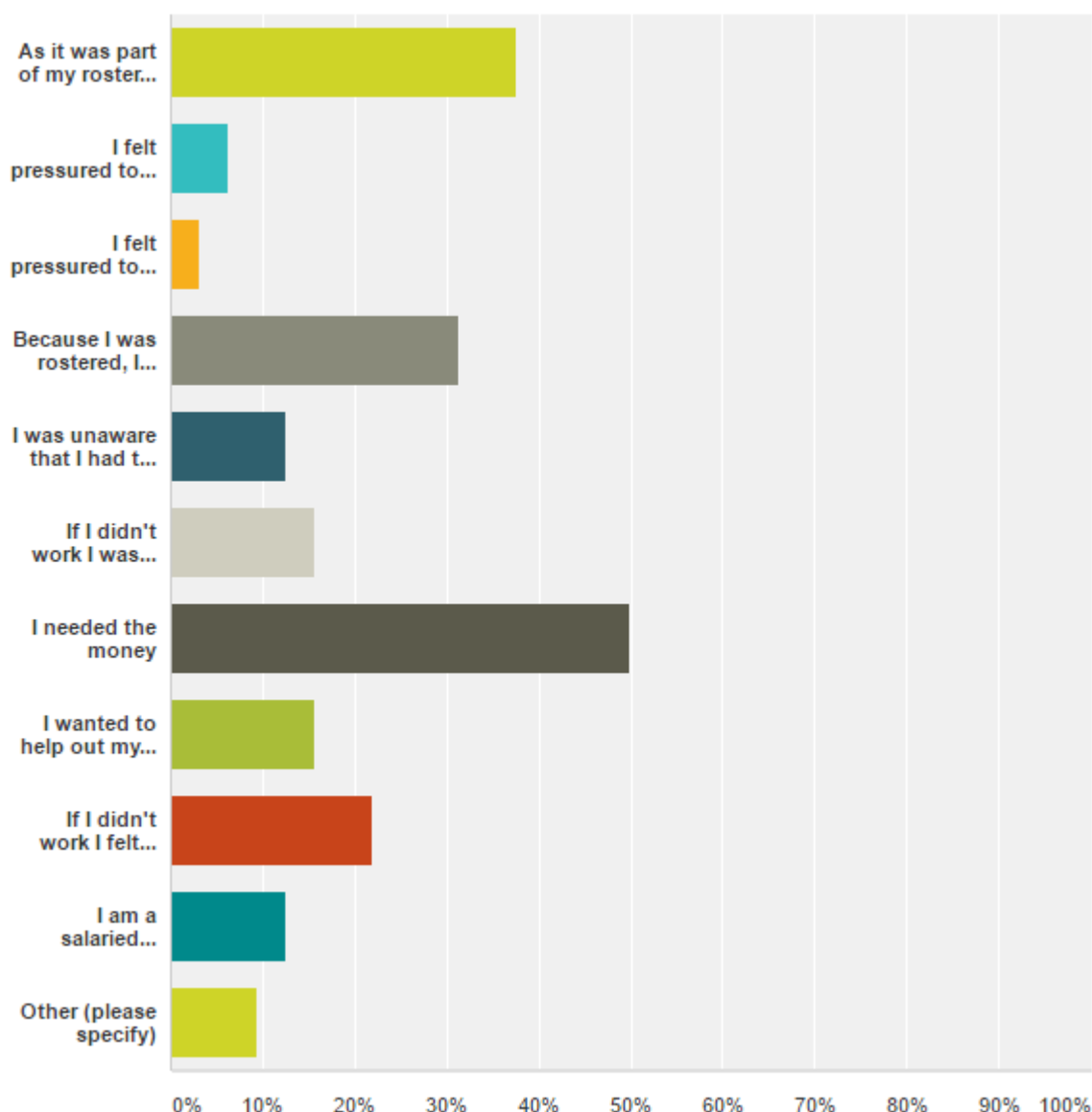
3.1.15 Those respondents who worked because they were “rostered to work” (Table 5) also reveal in more detail the pressure exerted to work:

50% of workers reported that one of the reasons they worked was because they needed the money

37.5% of workers reported that one of the reasons they worked was because their Manager expected them to work because it was part of their roster

31.3% of workers reported that one of the reasons they worked was because they had assumed they had to work the day because they were rostered

Table 7



Question: What were the reasons you worked? (check all that apply)

3.1.16 Those workers who worked on Boxing Day but “did not freely elect to work” also provide an interesting insight into why they worked notwithstanding their legal entitlement under the Act to refuse to work:

Table 8

Answer Choices	Responses
▼ I did not feel I could refuse my Manager	21.62%
▼ I was told I had to work	10.81%
▼ I was threatened and/or intimidated to work	2.70%
▼ My Manager kept asking me to work	8.11%
▼ As a casual I can't choose my shifts	5.41%
▼ I was worried about losing my job if I refused	8.11%
▼ I was worried about losing shifts if I refused	5.41%
▼ I was worried about missing out on additional shifts in the future if I refused	10.81%
▼ I was worried about getting a bad roster in the future if I refused	8.11%
▼ The shift was rostered	67.57%
▼ The shift was rostered and I was told it would not be changed	2.70%
▼ I was told that I had to work either Boxing Day or New Year's Day	2.70%
▼ I am a salaried Manager and it was expected that I work on Boxing Day	18.92%
▼ Other (please specify) Responses	16.22%

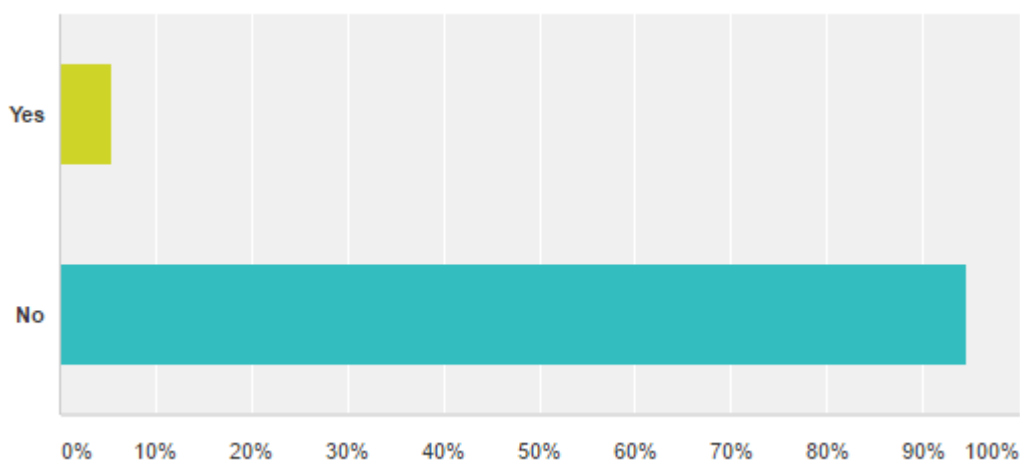
Question: What were the reasons you worked? (check all that apply)

3.1.17 Some of the individual responses ("Other") also paint a graphic picture of the pressure applied at the workplace:

- "I was not told about a form that needed to be filled out in order to be considered as unwilling to work that day, otherwise it was assumed that I wanted to work, and thus rostered on without being asked."
- "I was required to work Boxing Day, however not Australia Day when it fell into days i normally work. I have in the past been threatened and intimidated over working the Christmas/New Year period."
- "you are made to feel bad by saying no, they put the pressure on you about wages. so I worked half a day as a compromise"
- "When asked, I stated if I normally work - I would, but if not - it was Christmas and I'd prefer to be with my family. Over Christmas I ended up having one rostered day off - Christmas day, (I have a young family and basically missed Christmas)... I noted team members that had a better relationship with our co-ordinator managed to have a great holiday period!, and had (rostered) days off they wouldn't normally have had. I believe the boxing day volunteer idea is nothing short of a easy way for business to exploit team members that are disadvantaged in either employment re: (casual/part timers - concerned about future employment) or poorer team members that can't refuse due to their predicament.. For the record, I work a block roster (Sunday - Thursday) year round.."
- "Repercussions"

3.1.18 Of those workers who both did not volunteer to work and did not work on Boxing Day, just over 5% have suffered negative repercussions as a result of their decision not to work:

Table 9



Question: Have there been negative repercussions as a result of your decision not to work on Boxing Day? e.g. lost shifts, poor rosters, hostile behaviour.

These negative repercussions have included:

- “hardly get flexed up. Only as last resort when there is no-one else have also been asked about saying no to Easter which I am normal working. One comment from my manager was "obviously you don't need the money". Was not happy at all about that comment.”
- “I lost the following Monday shift and my regular Friday shift on New Years Day was almost cancelled over the phone with one day notice which I had to argue against.”
- “Managers attitude changed”
- “In my written notification of not volunteering to work Boxing Day I also stated I didn't volunteer to work after 6pm on New Years Eve or at all on New Years day. These two shifts are the exact and only ones I was offered for that week (I suspect on purpose to financially manipulate me), I gave new written notification (a reminder) that I would not work this shifts. I therefore had no work that week at all. It is now the 27th of January and I have not been rostered on in my usual department since the 27th of December (a day I verbally requested, and was promised the possibility of having off). Two new casuals were hired before Christmas and they are both receiving shifts regularly in that department but while I suspect I am deliberately not being given shifts I have been given shifts in other departments so I cannot prove my usual departments manager isn't aware of this in advance.”
- “Guilt trip”
- “Loss of shifts”
- “Attitude towards me was poor. Was spoken to about coming off holidays to be back for Easter.”
- “lost shifts”

- “People brought in from other stores with no idea what there to do so the next day I had to fix up all the problems. I feel like my store manager was annoyed I didn't work and now treats me different”
- “Spoken to rude no allowed to job share”

“I am continually asked to work and always decline, as it's my right to however I am often made to feel guilty for this choice.”

Supermarket worker
Lake Macquarie

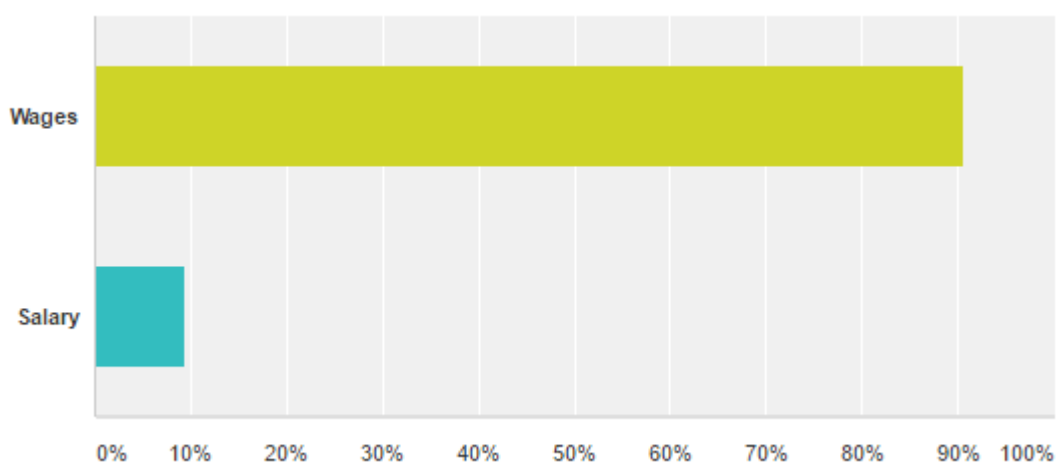
Boxing Day 2016 work survey

3.1.19 Of the respondents:

90.5% were waged workers

9.5% were salaried workers

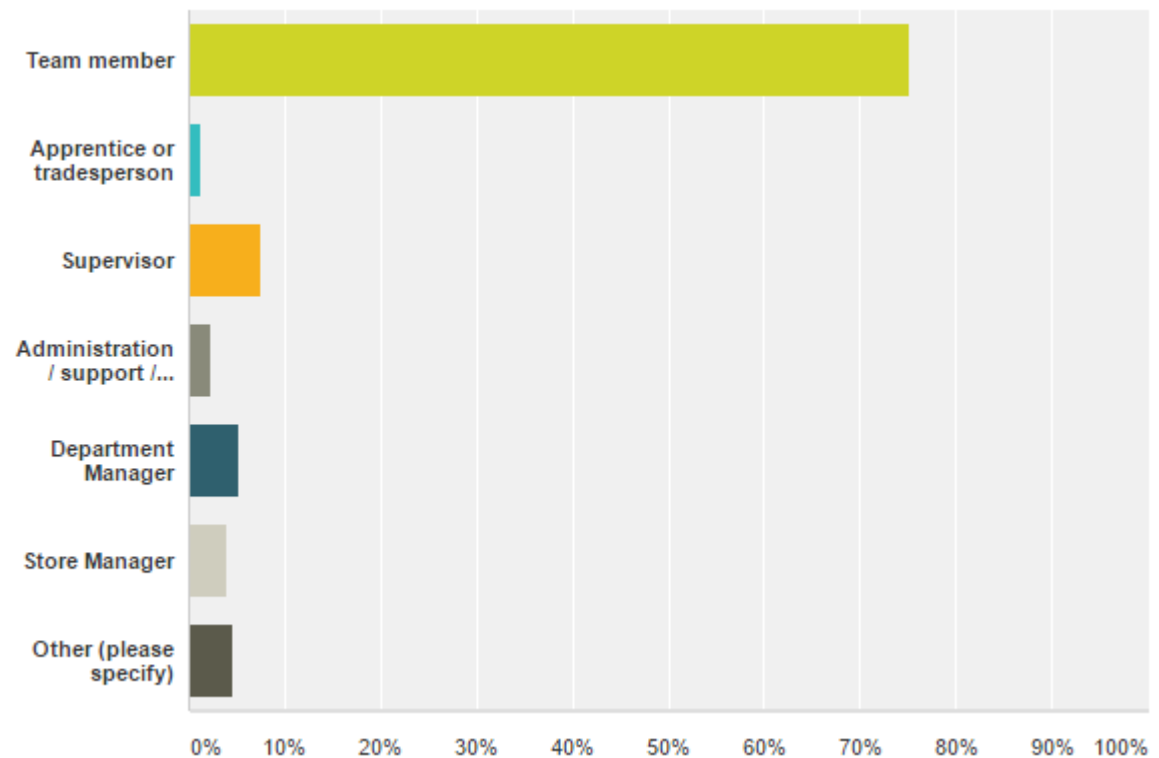
Table 10



Question: How are you paid?

The vast majority of respondents were shop assistants / team members (75.1%) followed by supervisors (7.4%), department managers (5.2%) and store managers (4.0%):

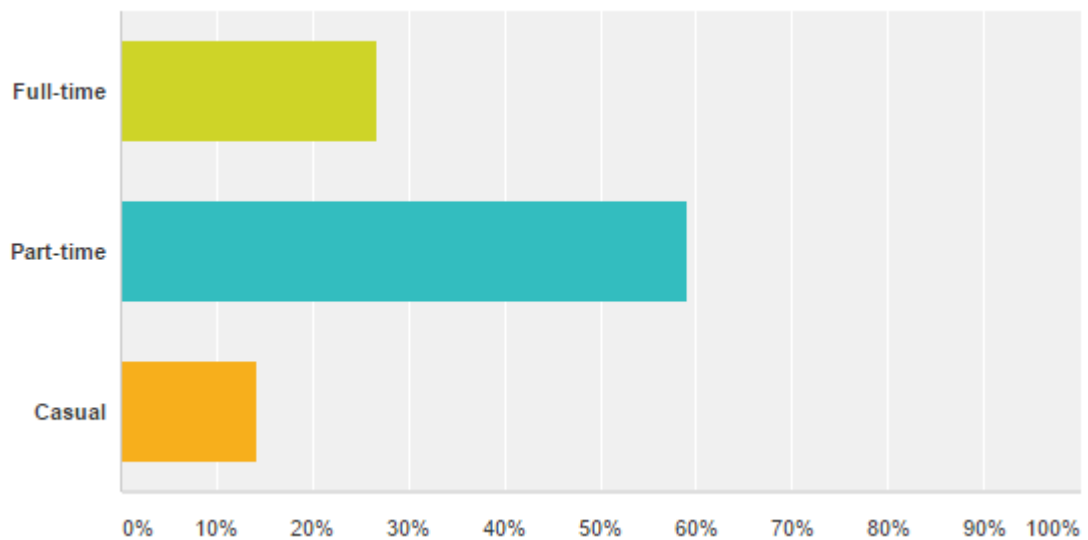
Table 11



Question: How would you describe your role?

26.8% were employed permanent full-time
 59.1% were employed permanent part-time
 14.1% were employed as casuals

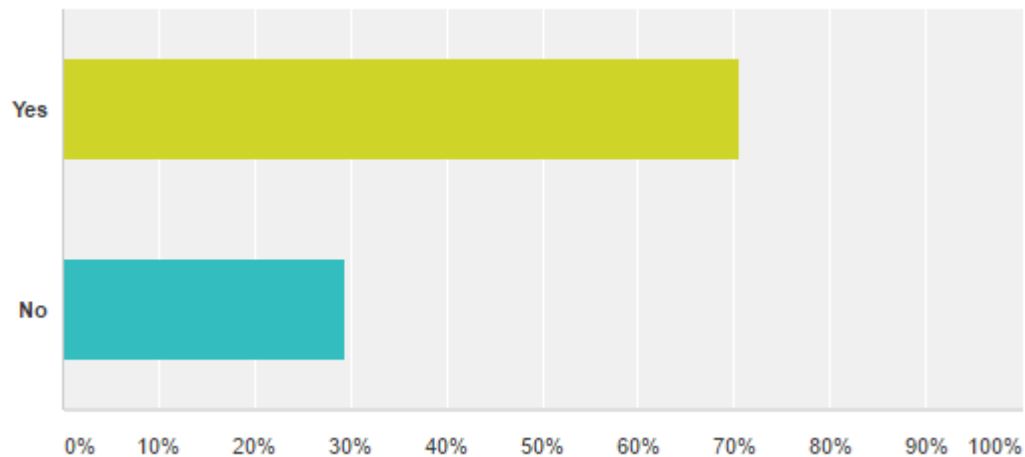
Table 12



Question: Your employment status?

3.1.20 Of those respondents who worked on Boxing Day 2016, **29.5% did not freely elect to work.**

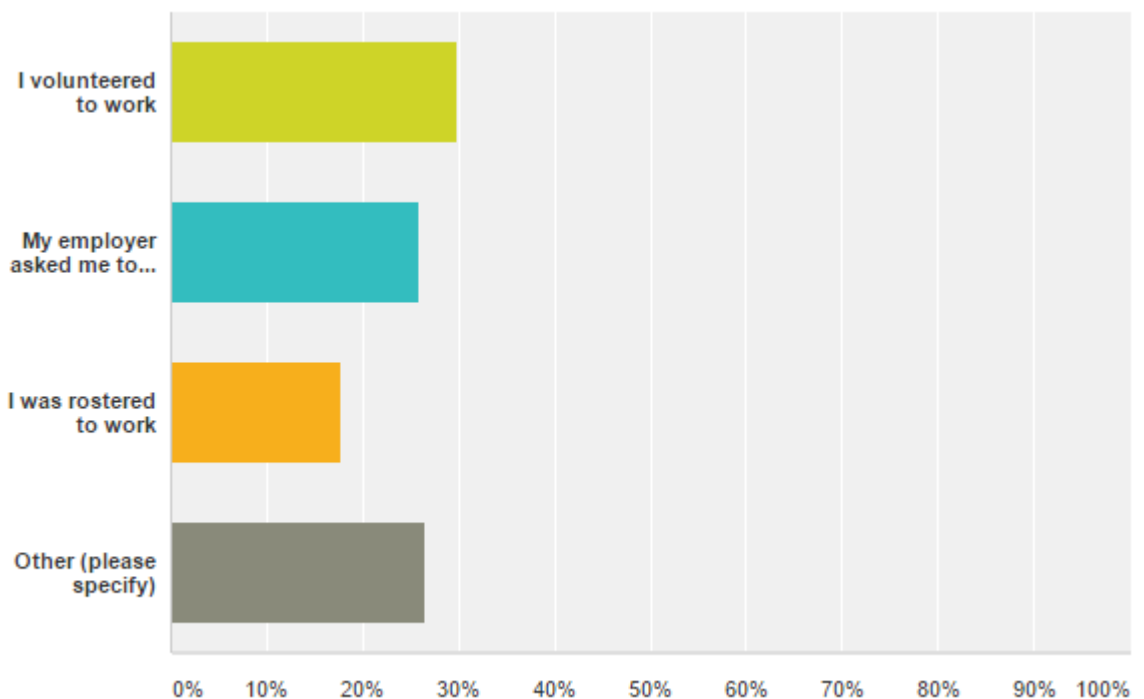
Table 13



Question: Did you freely elect to work?

- 3.1.21 Of those respondents who “freely elected to work” **more than one in every six workers (17.7%) nominated the main reason why they worked on Boxing Day was because they were rostered to work.** This suggests that the level of non-compliance as even more widespread.

Table 14



Question: What was the main reason why you worked on Boxing Day?

The total of those workers who state that they did not freely elect to work (Table 13 – “No”) in addition to those who worked because they were rostered to work (Table 14 – “I was rostered to work”) is **41.8% of those who worked on Boxing Day.**

- 3.1.22 Once again the individual responses (“Other”) reveal the economic pressure and the power imbalance experienced by often young and vulnerable workers in the industry:

- “as a newly appointed dept mng it was in the interest of my dept however i would have preferred to spend time with my family”
- “Only worked as only 1 employee wished to work I didn't really want to work it but as the manager I didn't want her to work on her own”
- “I felt obliged to as it was my normal day to work”
- “No other team member offered to work so I put hand up but really would have rathered the day off”
- “Nobody really wanted to do it and I needed the extra money. I would have preferred to have the day at home with my family.”
- “But it was either work Boxing Day or work New Year's Day”
- “Had no one to do set up”
- “Because this public holiday fell on a Monday. We balance the office for the previous week & run the payroll. I was not coerced to work but felt "obligated" to”
- “I can't ask my team to work it if I am not willing to do it also”
- “The pay run had to be completed, i had minimal hours of work for the week to complete all office tasks.”
- “I knew if I said no I would be looked down upon”
- “Extra money as a part time worker if you knock back work employers are reluctant to give you shifts”
- “I did not want to let the team down”
- “Everyone expected to work”
- “Felt obliged to help out”
- “i was asked to work because one of the supervisors rostered for that day refused to work. id felt bad if i didnt work for them although i had no supervising training for the shift.”
- “I work with one other team member. We elected to work one public holiday each. I chose monday as then i was having time off after boxing day”

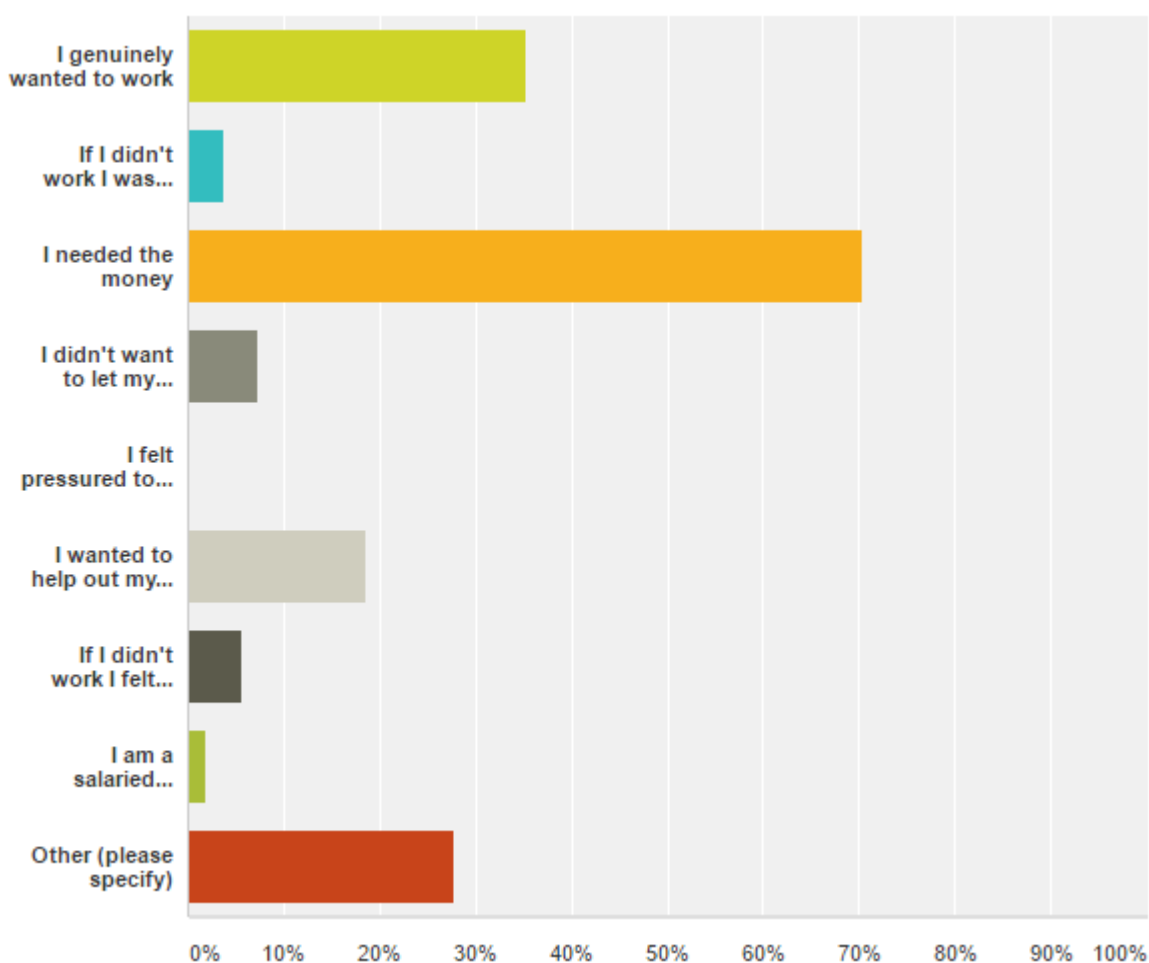
3.1.23 When those respondents who advised they had “volunteered to work” (Table 14) were probed further about why they volunteered the survey reveals:

70.4% of workers who “volunteered to work” reported that one of the reasons they did so was because they needed the money

3.7% of workers who “volunteered to work” reported that one of the reasons they did so was because they were concerned that they might not get shifts (or extra shifts) in the future

7.4% of workers who “volunteered to work” reported that one of the reasons they did so was because they did not want to let down their co-workers

Table 15



Question: Why did you volunteer to work on Boxing Day? (check all that apply)

"I support the closure of retail stores on Boxing Day as I have had to work every one for the last 5 years & have missed out on spending time with my family."

Supermarket worker
Central Coast

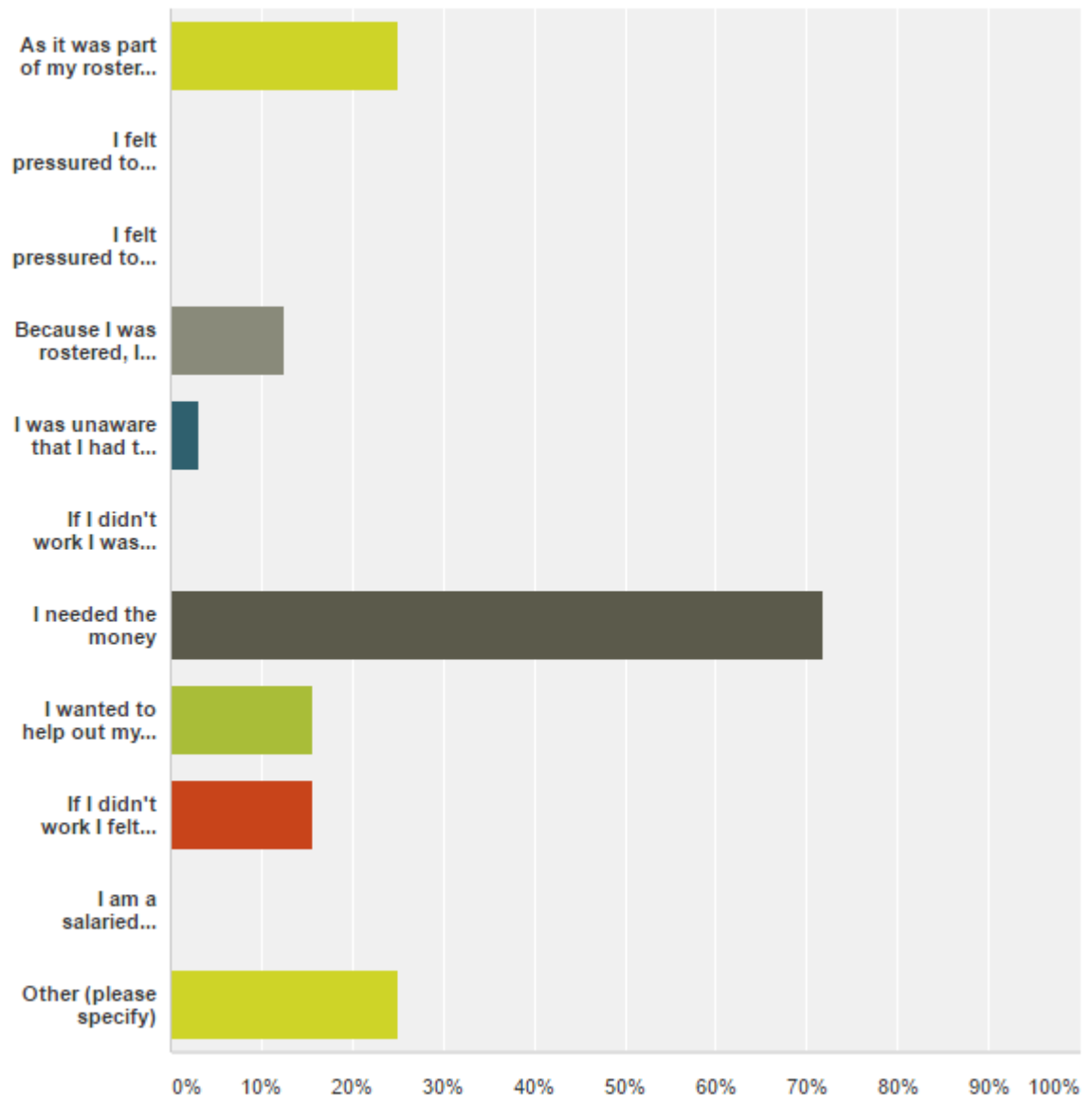
3.1.24 Those respondents who worked because they were "rostered to work" (Table 14) also reveal in more detail the pressure exerted to work:

71.2% of workers reported that one of the reasons they worked was because they needed the money

25.0% of workers reported that one of the reasons they worked was because their Manager expected them to work because it was part of their roster

12.5% of workers reported that one of the reasons they worked was because they had assumed they had to work the day because they were rostered

Table 16



Question: What were the reasons you worked? (check all that apply)

"It is tough not to succumb to the pressure not only me but my team mates are put under every year to work on this day [Boxing Day]."

Retail worker
Central Coast

3.1.25 Those workers who worked on Boxing Day but "did not freely elect to work" once again provide an interesting insight into why they worked notwithstanding their legal entitlement under the Act to refuse to work:

Table 17

Answer Choices	Responses
▼ I did not feel I could refuse my Manager	23.61%
▼ I was told I had to work	13.89%
▼ I was threatened and/or intimidated to work	1.39%
▼ My Manager kept asking me to work	6.94%
▼ As a casual I can't choose my shifts	12.50%
▼ I was worried about losing my job if I refused	8.33%
▼ I was worried about losing shifts if I refused	11.11%
▼ I was worried about missing out on additional shifts in the future if I refused	8.33%
▼ I was worried about getting a bad roster in the future if I refused	15.28%
▼ The shift was rostered	52.78%
▼ The shift was rostered and I was told it would not be changed	8.33%
▼ I was told that I had to work either Boxing Day or New Year's Day	12.50%
▼ I am a salaried Manager and it was expected that I work on Boxing Day	23.61%
▼ Other (please specify) Responses	27.78%

Question: What were the reasons you worked? (check all that apply)

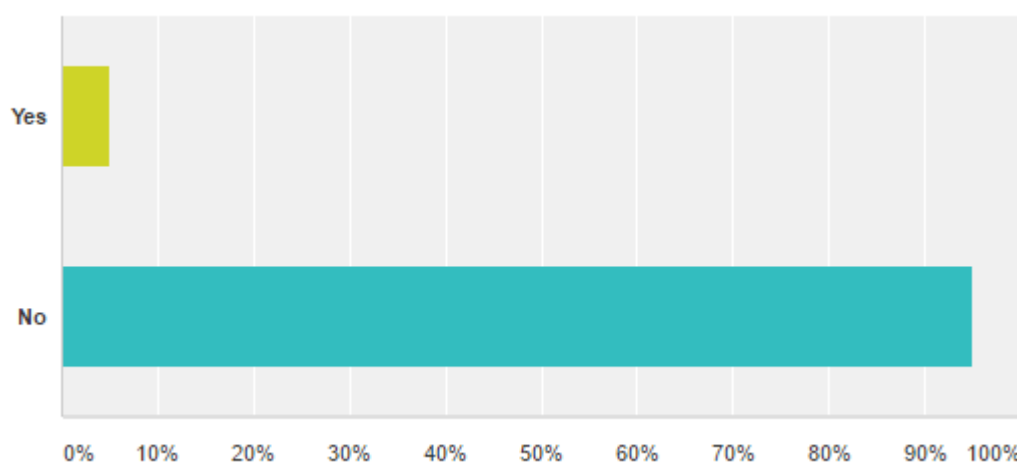
3.1.26 Some of the individual responses ("Other") also depict the pressure applied at the workplace:

- "As a relatively new team member I was not advised that I could have had this day off, so worked it."
- "There was no communication about not having to work it"
- "It was my rostered day on to work so i felt an obligation and like i had no choice if i could or couldn't work. Being in charge i felt an obligation and although area managers and state managers said we didn't have to work and there would be no repercussions i still felt like if i said no that i would be looked upon badly if i had of not worked and that i wasn't there to support my team. Although they said it was ok to say no and not work it, i still felt i had no choice and id be letting the company etc down. I just didn't want to run the risk of maybe being treated differently/badly."
- "I was told that the shop had to be open and preferred managers to work Monday to Friday"
- "I felt as though it was really put to team how important it is for us to work the day and what could happen if we didn't. I also didn't feel comfortable saying no as all higher management really put the expectation on"
- "Thought i was obligated to work being a manager if my staff work so should I"
- "We were told the shop must be open and preferred managers to work mon to Friday that week"
- "Under our EBA it specifies managers are to be available to work "peak trade"."
- "My store manager pretty much said it is my dept I have to run it I also was pretty much made work every other public holiday only day I did have off was Christmas Day"

- “I have worked boxing day for the past 7 years, I have always been told I have to work as part of my agreement with [employer’s name removed]”
- “All stores were told in October at a conference that we are required to trade and a management roster issued where managers were rostered to work and with no assistant manager due to maternity leave I was it”
- “As a manager we were expected to work we were not asked if we wanted to or if we could.”

3.1.27 Of those workers who both did not volunteer to work and did not work on Boxing Day, just under 5% have suffered negative repercussions as a result of their decision not to work:

Table 18



Question: Have there been negative repercussions as a result of your decision not to work on Boxing Day? e.g. lost shifts, poor rosters, hostile behaviour.

These negative repercussions have included:

- “the tone that is conveyed is that those who do "favours", like work Boxing Day, for the company get favoured treatment and those who don't won't get fair equal favour. Staff shouldn't have to feel like they're competition amongst each other.”
- “Hostile behavior, off hand comments from the managers about how I "never volunteer".”
- “Budget cut, 3 team members resigned, Tired team members and managers etc. reduced hours in January to cover the expensive days in December. Hours may be cut further into the year. Sales budgets not achieved. Sales budget spread over more days - under budget in December – January”
- “My line manager pointed out to me that I haven't worked any public holidays at all, which my response was "that's correct, they are voluntary ""
- “Verbal warnings for not answering work calls during the while I was spending time with my family.”
- “Loss of shifts”
- “Poor rosters and communication”
- “I feel I have lost out on any additional shifts on offer since, whether this is as a result of not working on boxing day or just coincidence I do not know, but have noticed people who did work have been rostered some extra shifts.”

- “as a result of not working boxing day 2015 i never again received a shift in my usual department, which i used to work in 3 to 5 shifts a week, and i felt the manager of that department was hostile toward me. (the 'silent treatment'), since then the only work i could get was in a different department which cannot give me as much work as i used to receive, as a result i am many thousands of dollars a year worse off, but the upside is my new manager is sympathetic to my wishes not to work on important occasions and hasnt punished me for not working boxing day 2016.”
- “I have been asked to supply a letter to explain my reasons not to work. I have not done so as i believe its a voluntary day to work and its none of there business why i choose not to work. They are still asking for the letter.”
- “Wasn't taken off the roster and the 2ic had messaged me saying I hadn't turned up to a shift and then had to explain that I had discussed with the night captain months ago I wasn't working it”
- “Shifts that I had been rostered were taken away from me with the excuse that 'we don't have enough money for extra staff'. Very hostile behaviour towards me. Since calling the union and them helping me get the day off work, I have been ignored by the store manager.”
- “All previously noted with SDA in regards to the management surrounding Boxing Day at [employer’s name removed]. Plenty of issues in regards to the forms indicating that team did not want to work and were not to be asked to work. Management twisted the wording of the form distributed by the SDA in attempt to not correctly pay part time and full time team members who were entitled to pay without having to work as per agreement for public holidays. There were bullying complaints by management as team were very reluctant to work so management attempted to influence team by the use of making union delegates out to be bullies... including myself. A lot of coercion and harassment to get the team who did work, to work, by management. People are too weak to stand their ground and folded to management with bargaining deals.”
- “was given crap from other 2IC and managers who did not exercise their right to refuse. was pressured to work by store management”
- “They make people feel guilty so they will”

The verdict

- 3.1.28 **More than two in every five retail workers who work on Boxing Day** either does not freely elect to work on the day or the main reason that they work is because they were rostered to work on the day.
- 3.1.29 The non-compliance with retail trading laws is **endemic**. The surveys comprehensively demonstrate that NSW retailers are riding rough shod over the law and yet the NSW Government has sat idle.
- 3.1.30 From 2015 (23.8%) to 2016 (29.5%) there was a deterioration in the proportion of respondents who reported that they did not “freely elect to work” on Boxing Day.
- 3.1.31 From 2015 (26.7%) to 2016 (17.7%) there was an improvement in the proportion of respondents who reported that the main reason they worked on Boxing Day was because they were rostered to work on the day.

3.1.32 Taken together these responses in 2015 (43.8%) and 2016 (41.8%) show that there has been no significant improvement in the widespread abuse of the law. The individual responses above demonstrate that the law will never provide adequate protection for workers in an unequal power relationship with their employer.

"I work in the office and see the tactics that management do to pressure my team members to work and the pressure they feel that this is not voluntary."

Retail worker
Newcastle

3.1.33 From 2015 to 2016 the Union conducted extensive education and enforcement programs in the lead up to both Christmas / Boxing Day trading periods. This included:

- Pro-forma Boxing Day refusal to work forms for workers to complete and hand to their Managers;
- Shopping centre blitzes and workplace visits by Officials
- Workplace Delegate education and training
- Leaflet distribution in workplaces explaining rights and entitlements
- Email distribution to all members with valid email addresses on file
- Social media (Facebook) education and paid online advertising
- Limited unpaid media exposure where available (e.g. radio)
- Text messages to Delegates

3.1.34 This activity increased approximately twofold in 2016 when the Union planned and executed a two month education and enforcement program (rather than just one month in 2015 due to the late passing of the amendment) with respect to Boxing Day trade. And whilst this activity yielded more conversations it has no discernible impact whatsoever of the pervasive level of non-compliance by retailers due to the systemic issues detailed within this submission.

3.1.35 On the Central Coast (Woy Woy) and Hunter Valley (Rutherford) the Union took remedial action against the Managers of large retail establishments who defied the law and ripped up written notices provided by workers advising they were exercising their right to the day off on Boxing Day. Officials held countless conversations with Managers of small fashion and other chain stores during November and December who reported that for them there was no other choice. To elect not to work would sign a death knell to their future career prospects. On other occasions young casuals simply said that they could not afford to risk retribution from their Manager and lose shifts if they took the time off on Boxing Day. Undoubtedly these cases are the tip of the iceberg. These case studies arose time and time again in unionised workplaces. It is reasonable in our view to assume that levels of non-compliance in non-union workplaces would be even higher.

- 3.1.36 At the core of the problem is that the law is misdirected. Direct experience has shown that retail workers cannot freely elect not to work on Boxing Day without fear, real or apparent, of consequences to their economic and job security. Only the closure of shops on Boxing Day will guarantee that retail workers can enjoy two days off at Christmas in line with the expectations of the rest of the community.
- 3.1.37 Was Boxing Day trading successful for employees? It was unquestionably unsuccessful for the vast number of workers who worked against their wishes.

3.2 CONSUMER DEMAND

- 3.2.1 One of the arguments advanced in favour of the extension of Boxing Day trading has been alleged high consumer demand. This assertion has commonly been advanced by big retailers and large shopping centre landlords.
- 3.2.2 The assertion that there is “high consumer demand” warrants critical assessment. Non-independent and self-serving surveys conducted by some retailers to justify their ambitions do not constitute “high consumer demand”. Logs of telephone calls received from a handful of disgruntled customers who could not return their faulty Christmas present on Boxing Day does not constitute “high consumer demand”. A few shopaholics knocking on the shop door to pick up a \$100 fridge bargain at 5am on Boxing Day does not constitute “high consumer demand”. The handyman can wait another day for pool salt, a new nail gun and a sprinkler. The new dress and the flat screen TV on special can wait just one more day.
- 3.2.3 One of the great swindles perpetuated by some retailers was the deliberate re-marketing of the post-Christmas sales. In more recent years these sales have been rebadged “Boxing Day sales” when these retailers knew that the vast majority of their stores in NSW were not permitted to open on Boxing Day. Indeed the majority (or a significant proportion) of their stores across Australia are not allowed to open for trade when you take into account NSW, WA and SA. Some retailers actively encouraged a demand which did not exist.
- 3.2.4 Of course a small number of consumers eager to pick up the post-Christmas bargains would be ringing and complaining that they cannot get to the “Boxing Day sales” on Boxing Day. This is not a legitimate demand. It is simply a demand created by the marketing ploys and confusion brought on by the retailers themselves. It should not be rewarded by some meek and uncritical assessment of whether there is legitimately a demand in existence.
- 3.2.5 The Union submits that consumer demand is very limited and to the extent that it exists, it has also been driven by the efforts of retailers to extend their trading hours using the exemption system which operated prior to the 2015 amendments.
- 3.2.6 In short, a telephone complaint by a disgruntled customer on Boxing Day expressing frustration that their local store was not open is not a genuine complaint if it was caused

by the various marketing ploys, advertising and exemptions generated by the retailers themselves.

- 3.2.7 The Union notes the only transparent, broad based and legitimate referendum conducted on whether retail trading hours should be deregulated was conducted in Western Australia in 2005. The people of Western Australia, i.e. the consumers, said NO!
- 3.2.8 In that 2005 WA referendum a substantial majority of the population voted against longer trading hours. 58.7% were opposed to the extension of weeknight trading⁴ and 61.4% were opposed to the extension of Sunday trading.⁵ There can be no more accurate reflection on community views than a referendum. If people have elected not to have longer trading hours, then this is the pertinent view of the people/consumers. This calls into serious question the legitimacy of retailer claims there is an overwhelming (or any) desire within the community at large to trade on public holidays; it is definitely not a majority view.
- 3.2.9 Another recent and specific examination of retail trading hours was conducted in South Australia in 2006/2007. It had a broad reference and examined many matters including the welfare issues. The findings of this can be found in the *'Report of the 2006/07 Review of the Shop Trading Hours Act 1977'* by Alan Moss. In contrast to the Productivity Commission draft Report, the Review of the South Australian Shop Trading Hours Act, concluded that:
- "[t]here is no clear evidence of public demand for further extension of shopping hours."***⁶
- 3.2.10 No referendum has ever been conducted in NSW to the best knowledge of the Union.
- 3.2.11 Recent independent polling⁷ conducted by EMC also strongly suggests that the public has no great appetite for Boxing Day trading. Whilst some consumers choose to shop on Boxing Day the vast majority exercise other preferences such as spending time with family and friends or relaxing. When one takes into account those consumers who shopped only on Boxing Day, just over one in every eight consumers exercised that choice and arguably they would have simply exercised the same choice a day later on the 27th December if shops remained closed on the 26th ...
- 3.2.12 The other significant finding in the polling conducted by EMC is shopping on Boxing Day is ranked well below other activities. It barely rates a mention at just 5% of respondents making shopping their first choice for the day.

⁴ Question - Do you believe that the Western Australian community would benefit if trading hours in the Perth Metropolitan Area were extended to allow general retail shops to trade until 9 pm Monday to Friday?

⁵ Question - Do you believe that the Western Australian community would benefit if trading hours in the Perth Metropolitan Area were extended to allow general retail shops to trade for 6 hours on Sunday?

⁶ Moss, Alan Report of the 2006/07 Review of the Shop Trading Hours Act 1977, p 51

⁷ EMC Survey – January 2016

Table 19 - EMC Survey – Did you attend any of the recent post-Christmas sales? If so, which day or days did you go?

	Total	Sydney	Other NSW	Men	Women	2015 poll
Boxing day – Monday 26 December	23%	26%	17%	20%	26%	24%
Total Boxing Day only	13%	14%	13%	14%	13%	12%
Tuesday 27 December	17%	21%	9%	15%	18%	15%
Wednesday 28 – Saturday 31 December	18%	21%	12%	14%	21%	25%
Sunday 1 – Thursday 5 January	11%	14%	7%	8%	14%	17%
Total attended any sales	49%	55%	38%	43%	55%	55%
No, did not attend any sales	51%	45%	62%	57%	45%	45%

Table 20 EMC Survey – Ranking of Boxing Day Activities in order of importance

	1	2	3	4	5	6	Total ranked 1-3
Spending time with family	54%	26%	12%	5%	2%	1%	92%
Just relaxing	28%	31%	26%	9%	3%	2%	85%
Spending time with friends	7%	30%	37%	20%	5%	2%	74%
Shopping	5%	5%	9%	25%	30%	25%	19%
Watching cricket on TV	4%	5%	10%	18%	20%	44%	19%
Helping a charity	1%	2%	6%	23%	41%	26%	9%

3.2.13 The polling confirms that there is no overwhelming desire for NSW consumers to go shopping on Boxing Day

3.2.14 There is no evidence to suggest that the trial of Boxing Day trading has been a success for consumers given that the overwhelming majority of NSW citizens have voted with their feet and done other things with their time.

3.3 ECONOMIC AND EMPLOYMENT ACTIVITY

3.3.1 It has been regularly asserted, without any foundation, that extending trading hours into the threadbare 4 ½ remaining restricted public holidays will *“have a positive impact upon broader economic activity and employment growth”*.⁸ This argument suggests that extending retail trading hours will “grow the pie for everyone”. The Union is not aware of any recent independent economic study which supports this assertion. Applying some logic to this proposition, it assumes:

- If shops are permitted to trade on 360.5 days per year consumers as a whole will spend \$X
- If shops are permitted to trade on 365 days per year consumers as a whole will spend \$(X+Y) by the mere fact that the shops are open for trade longer (setting aside any other factors)

3.3.2 Not only does this proposition defy the logic that most consumers will generally spend within the limits of their own budget and, therefore, the mere fact that shops may open for trade 4 ½ days longer per year does not magically put more money in their wallet to spend, but even if longer trading hours encouraged consumers to spend more, e.g. using credit and/or 48 month interest free periods etc., there is a limit to which consumers can sustain the growth of household debt. At some point that debt must be paid off, meaning there is likely to be a commensurate contraction in spending at another point in the economic cycle, particularly during a general economic downturn. Therefore, the pie may expand in the short term but in the longer term it will contract back to sustainable long term trends. Most retailers confirm this phenomenon has recently occurred in the wake of the GFC after the retail stimulus packages funded by the Commonwealth Government washed their way through the economy.

3.3.3 It is more likely, in the Union’s view, that the fixed pot of money to be spent in retail is simply redistributed across a longer span of trading hours and any growth is more likely to be attributable to other factors, e.g. general economic conditions, inflation, wages, interest rates, innovation and the strength of the Australian dollar with respect to retail imports.

3.3.4 On this point the Unions reiterate the findings of an independent report from the South Australian Centre for Economic Studies, which concluded:

“Based on the experience of the previous extension of shopping hours, there is no evidence to suggest that further liberalisation would increase either state income or employment levels.”⁹

3.3.5 Furthermore, the SA Centre for Economic Studies concluded any potential net benefit for the state [SA] of increased retail expenditure will come at the expense of household savings. And, *“ABS data on retail turnover provides no evidence of a benefit, in that*

⁸ NSW Government Discussion Paper 2011, p 8

⁹ The Potential Economic Impact of Liberalisation of Shop Trading Hours, The SA Centre for Economic Studies, September 2006

there has been no apparent increase in rate of growth of retail employment in South Australia [since further liberalisation of trading hours].”¹⁰

- 3.3.6 The assertion that employment will grow as a consequence of further deregulation of retail trading hours is also not supported by the evidence.

“ABS data on retail turnover provides no evidence of a benefit, in that there has been no apparent increase in rate of growth of retail employment in South Australia [since further liberalisation of trading hours].”¹¹

- 3.3.7 The Union’s experience has been that extending retail trading hours does not increase the total number of hours of work available. These hours are redistributed because the sales made during the new extended trading hours cannibalise sales at other times in the week. Consumers don’t generally spend more because of the increased trading hours, they simply spend the same amount across a wider range of hours in the week. The retailers respond by simply changing rosters and cutting hours at other times.
- 3.3.8 The Government should not blindly accept the economic proposition that there will be some magical positive impact on broader economic activity without rigorous independent and non-partisan economic analysis.
- 3.3.9 More recently the McKell Institute has analysed two years’ worth of data on restricted trading on Boxing Day.¹² The Report confirms that retail spending has grown in December in NSW each year prior to and after the deregulation of Boxing Day trading. Retail spending in December 2016 grew by 2.06% compared to December 2015.
- 3.3.10 However, the growth rate in retail spending in 2015 and 2016 was lower than it was in 2013 and 2014, but higher than in previous years. And whilst NSW was top of the pile compared to other States in 2013 and 2014, it has lagged in 2015 and 2016 since deregulation.
- 3.3.11 The report concluded that there is no direct correlation between the deregulation of Boxing Day trading and a notable increase in economic activity in the retail sector of NSW. While total December expenditure was higher in the two years since Boxing Day trading was deregulated, the growth merely continued a long running upward trajectory in retail expenditure in NSW. This doesn’t demonstrate a higher rate of retail expenditure growth.
- 3.3.12 The 2006/07 review of the South Australian Shop Trading Hours Act did examine in some detail the likely effect of deregulation on the community and society:

“While it is a primary duty of governments to grow their communities’ economies it is not their only duty. Governments also have a duty to nurture and preserve their social and community fabric and institutions. It does not serve us well if, in the end, we

¹⁰ The Potential Economic Impact of Liberalisation of Shop Trading Hours, The SA Centre for Economic Studies, September 2006

¹¹ The Potential Economic Impact of Liberalisation of Shop Trading Hours, The SA Centre for Economic Studies, September 2006

¹² The McKell Institute 2017, The Economic Impact of Deregulating Boxing Day Trading in NSW

become materially wealthy and spiritually impoverished. I have noticed that those arguing in favour of deregulation, or extension, of shopping hours, very often describe their proposals as “reforms”, in the sense that adoption of their proposals would be a change for the better. Of course changes are only reforms in that sense if they benefit the community as a whole. If the changes have the potential to benefit some members of the community at the expense of others, then they are unlikely to be reforms.

Governments should only pass laws which have this potential if it is clearly in the interests of the vast majority of the community. At the end of the day there are more important human activities than shopping.”¹³

¹³ Moss, Alan Report of the 2006/07 Review of the Shop Trading Hours Act 1977, p 51

4. CONCLUSION

- 4.1.1 The Union welcomes this review and submits that retail trading restrictions need to be strengthened.
- 4.1.2 Unrestricted Boxing Day trading provides no net benefit to the community.
- 4.1.3 Good Friday, Easter Sunday, Anzac Day, Christmas Day and Boxing Day should be restricted trading days on which NSW shops should remain closed.
- 4.1.4 Exemptions based on artificial geographical boundaries (e.g. so-called tourist trading zones) should be abolished. It is an absurdity that the retailers should now be rewarded with state-wide unrestricted trading on Boxing Day to alleviate the very complexity which they sought and created.
- 4.1.5 The further deregulation of trading hours may benefit some retailers and large shopping centre landlords but it will harm retail workers, their families, smaller retailers and the general community. Our social fabric will continue to fray at the edges.
- 4.1.6 Further deregulation will continue to put pressure on work life balance which is non-existent for many and tenuous at best for others.
- 4.1.7 The Union recommends that:
 - The Boxing Day trading trial be discontinued;
 - Boxing Day be restored as a restricted trading day;
 - To the extent that there is alleged complexity or confusion arising from pre-existing arrangements, such complexity may be resolved through the dismantling of previous tourist trading zones;
 - The boundaries of any proposed Sydney CBD trading precinct be narrowly defined in consultation with our sister Union, the Shop, Distributive and Allied Employees' Association, New South Wales Branch; and
 - Anzac Day be declared a restricted trading day for the full day.
- 4.1.8 On behalf of 14,000 members, their families and their communities, the Union calls upon the Government to discontinue the Boxing Day trading trial.