



**SELECT COMMITTEE ON  
WORKING FAMILIES IN THE AUSTRALIAN CAPITAL  
TERRITORY**

**Submission from**

**Community & Public Sector Union (PSU Group)  
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## **SELECT COMMITTEE ON WORKING FAMILIES IN THE AUSTRALIAN CAPITAL TERRITORY**

### Terms of Reference:

The Select Committee on Working Families in the Australian Capital Territory is appointed to examine the effect on working families in relation to:

- health costs;
- effects of industrial relations changes;
- adjustments by the Commonwealth Grants Commission and the allocation of funds by the Commonwealth
- impacts on current or potential ACT legislation by the Commonwealth;  
and
- any other related matter.

## CPSU SUBMISSION

### Introduction

1. The PSU Group of the Community and Public Sector Union (PSU Group) ("CPSU") represents workers in the Australian Public Service ("APS"), the Australian Capital Territory Public Service, the Northern Territory Public Service, the telecommunications sector, call centres, employment services and broadcasting.
2. In this submission, the CPSU proposes to solely address the Select Committee's Term of Reference on industrial relations and discuss how the Federal Government's proposed industrial relations changes outlined in the "Work Choices" legislation will impact on working families in the ACT.
3. CPSU estimates it has successfully negotiated and assisted members to negotiate well in excess of 1,000 workplace agreements since the inception of the *Workplace Relations Act* 1996. These include agreements made under section 170LK (agreements made with staff), section 170LJ (agreements made with unions) as well as agreements made under section 170LL (greenfields agreements) and Australian Workplace Agreements ("AWAs").
4. The CPSU and its members have vast experience in industrial relations; in bargaining and agreement-making, in settling industrial disputes and individual grievances, in seeking the assistance of the Australian Industrial Relations Commission ("AIRC") in conciliation and arbitration and in promoting fair and safe work practices.
5. The CPSU is the principal union representing employees of the Australian Public Service (APS) and this constitutes between 65% and 70% of the CPSU's membership.
6. In the ACT, CPSU membership numbers more than 11,000 working families.
7. Our members are from a diverse range of workplaces; they include security guards, park rangers, policy advisers, allied health professionals, border protection officers, tax officers, Centrelink customer service officers, customs officers, quarantine officers, scientists and lawyers.

### How "Work Choices" will affect working families in the ACT

8. The principal threat to working families in the ACT comes from the Federal Government's "Work Choices" legislation that seeks to radically overhaul the current framework of industrial relations.<sup>1</sup>
9. The "Work Choices" legislation, when enacted, will come into effect in the ACT almost immediately and will impact on all ACT workplaces including the Federal and ACT public sectors.
10. The intent of the "Work Choices" legislation is to apply market-style principles to industrial relations processes, within a framework that gives employers significantly more control over workplace issues, and sidelines both the role of trade unions in workplace bargaining and the independent umpire, the AIRC.
11. It is inevitable that working families in the ACT will feel the impact of these new industrial laws through the erosion of existing rights and protections and the removal of the current safety net found in the "no disadvantage test".

#### **The impact of AWAs in the public sector**

12. One of the intentions of the "Work Choices" legislation is to promote and facilitate a broader take-up of individual contracts or Australian Workplace Agreements ("AWAs") at the expense of collective agreements.
13. A leaked Federal Cabinet submission in 2002, showed that the Federal Government has long been concerned at the low numbers of AWAs in the Australian Public Service (APS), and three years ago outlined a plan to compel public servants to sign non-union AWAs.<sup>2</sup>
14. Many of the elements of this leaked Cabinet Submission, such as it being compulsory for all new starters in the APS to sign an AWA, are now being implemented in agencies such as DEWR and Centrelink.
15. CPSU believes this will spread rapidly across the APS once the "Work Choices" legislation is enacted. It will also be possible that the Federal Government will seek to pressure the ACT Government to adopt a similar approach to employment in the ACT public sector.
16. CPSU expects that increasingly, many of the other components outlined in the leaked Cabinet Submission, such as making all promotions and transfers within the APS conditional on signing an AWA, will also be implemented once the Federal Government's "Work Choices" legislation is enacted.

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<sup>1</sup> Workplace Relations Amendment (Work Choices) Bill 2005.

<sup>2</sup> "New bid to crush PS union" The Canberra Times, 17<sup>th</sup> December 2002. [See Attachment A]

17. One of CPSU's chief concerns with making employment in the public sector conditional on signing an AWA is that it undermines the principle that public sector employment should be solely on the basis of "merit". We say the best person should always get the job; not just the person who is willing to sign an AWA.
18. The increased number of AWAs in the public sectors in the ACT will have a negative impact on working families since it is the CPSU's experience that union-negotiated collective agreements deliver better outcomes for employees than any non-union agreements.
19. AWAs have been used primarily in the Commonwealth public service to encourage staff off collective agreements and for some employers certain conditions such as salary sacrificing and payment performance bonuses are more freely available to those employees who sign an AWA.
20. Furthermore, as the Federal State of the Service Report 2003-04 notes, "those on AWAs consistently receive higher bonuses at all classification levels".<sup>3</sup>
21. It is of concern to the CPSU that increasing pressure from the Federal Government to implement its "Work Choices" package and to increase the number of AWAs will have the effect of compromising and politicising many of the traditions of the public sector.

### **Choice & collective bargaining capacity**

22. The "Work Choices" Explanatory Memorandum asserts that "employees will benefit from the enhanced choice"<sup>4</sup>. However, for many employees this proposed legislation will offer them only one choice: accept the job and the conditions that go with it, or find yourself another job.
23. The CPSU believes that both employees and employers should be given choice over the type of agreement that is to govern the terms and conditions of employment. In Canada, the US and the UK, a right to collectively bargain is enshrined in law when a majority of workers in a workplace support union bargaining and an employer must recognise that right and negotiate with that union. That is a fair system.
24. However, the Work Choices Bill actively undermines collective bargaining, giving Australian employees less rights than those in these comparable countries.
25. Earlier this year, staff in the Minister for Employment's own department, DEWR, experienced first hand some of the unfair and

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<sup>3</sup> State of the Service Report, 2003-04, page 95.

<sup>4</sup> *Workplace Relations Amendment (Work Choices) Bill 2005*: Explanatory Memorandum page 15

divisive tactics used to push employees towards AWAs and off the union-negotiated collective agreement.

26. DEWR management frustrated and protracted the bargaining process for a new certified agreement so that it took 15 months to negotiate a new agreement and for staff to receive a pay rise. In the meantime, staff were encouraged by management to sign an AWA and receive an immediate pay rise. The certified agreement eventually agreed to by DEWR management gave employees a better outcome than the AWA.
27. CPSU's experience representing members in Telstra shows that an increased take up of AWAs will inevitably undermine employees' collective bargaining power and lead to poorer outcomes in future bargaining for collective agreements.
28. Telstra has had a policy of making signing an AWA compulsory for all new starters since 1998. When this policy was first implemented, nearly all Telstra employees were on a collective agreement, union membership was high and pay rises averaged 4-5% per annum. After 7 years of staff turnover, this has evolved to a situation in which only around 40% of staff remain on a collective agreement. The most recent agreement negotiated in Telstra this year was only able to achieve a pay rise of 2.5% per annum over the life of the agreement – a pay rise that will not even keep pace with inflation – and a clear demonstration of the consequences of eroding collective bargaining power through the spread of AWAs in a workplace.
29. CPSU believes that the spread of AWAs amongst public servants will see a similar undermining of collective bargaining power. This effect will not be immediate for most, and public servants may continue to maintain many of their conditions for longer than other working families in the ACT. However, it is inevitable that with the application of market principles to employment conditions, that over time, wages and conditions will deteriorate.

### **Collective agreements deliver better outcomes**

30. The prevalence of collective agreements in the APS demonstrates employees strong reference for collective agreements. As of 17<sup>th</sup> October 2005, there were 101 certified agreements covering about 126,000 federal public servants. Only 11,481 individuals were covered by AWAs at 30<sup>th</sup> June 2005; 1,966 at Senior Executive Service level, where AWAs are compulsory, and 9,515 non-executive level staff. These figures show that only approximately 9% of APS employees, including those at SES level, have taken up AWAs.
31. In CPSU experience employees are in a better bargaining position when they are able to collectively negotiate with their employer. In most

circumstances, an individual employee cannot negotiate in any meaningful manner with their employer.

### **CPSU members have the most to lose**

32. Many of our members, particularly those employed in the APS, currently enjoy conditions well above those in the proposed Australian Fair Pay Commission Standard [AFPCS] or the relevant award. If they were forced onto the AFPCS these employees would lose a whole range of entitlements, including redundancy entitlements, allowances, penalty rates and access to classification, redeployment and family-friendly provisions.
33. In an environment where an employer is refusing to negotiate a replacement collective agreement or unnecessarily drawing out negotiations for a replacement collective agreement, the employer will be able to force employees onto AWAs to retain conditions comparable to those to which they are accustomed.

### **Family friendly conditions threatened by Work Choices**

34. CPSU members in the ACT working for the Commonwealth Public Service and the ACT Public Service currently enjoy access to a range of "family friendly" conditions that help to attract and retain highly skilled employees in the public sectors of the ACT.
35. Through bargaining the CPSU has managed to achieve a broad range of family friendly conditions. These include:
- An increase of up to 3 weeks paid maternity leave on top of the statutory minimum of 12 weeks' paid maternity leave contained in the *Maternity Leave (Commonwealth Employees) Act 1973*;
  - Up to 14 weeks paid adoption leave for the primary care giver;
  - 2 weeks paid maternity leave for persons not otherwise entitled;
  - Up to 6 weeks paid leave for the other parent;
  - A pool of paid leave accessible by those with caring responsibilities, over and above their own personal leave credits;
  - Additional annual personal leave;
  - A removal of the cap on personal leave which can be taken as carer's leave;
  - The ability to purchase additional leave each year through salary sacrifice;
  - More flexibility in managing hours of work through schemes such as flextime;
  - The right to access leave at half pay which doubles the available leave;
  - The right to work part time for up to 5 years after the birth of adoption of a child;

- Access to home based work, on a fulltime, part-time or occasional basis;
  - Assistance with child care fees during school holidays;
  - Availability of a child or dependent care referral service;
  - Specific workplace care facilities, including nursing mothers' rooms, "sick children" offices, and childcare rooms.
36. It is clear that to date, collective bargaining has provided a vehicle to achieve improved conditions for CPSU members.
37. The nature of bargaining means that it often requires trade-offs with each successive agreement and hard won family friendly outcomes will inevitably be placed under pressure in future negotiations.
38. This is particularly the case for the APS which requires each agency to find an "efficiency dividend" of 1.25% each year. As agencies seek to find this efficiency dividend without cutting staff numbers, these family friendly conditions come under pressure.
39. An example is Centrelink, which is currently negotiating a new certified agreement, and where the employer has made pay increases conditional on a reduction in personal leave usage. This pressure to trade-off "family friendly" conditions has been evident in all negotiations for new agreements.
40. To date, CPSU has largely been successful in ensuring that these trade-offs are minimised and that conditions have been maintained at an APS average. To a large degree, the ability to resist these trade-offs is a function of collective bargaining power in an agency.
41. CPSU-led bargaining has clearly resulted in positive outcomes for working families in the public sector. The cycle of collective bargaining provides an ongoing opportunity to focus on "family friendly" issues, and outcomes in one agency can then arguably be spread to other agencies. This is particularly so within portfolio agencies, and between "like" agencies or agencies who see themselves as competing for the same staff. A desire not to be left behind, and the need to be able to appeal to prospective employees, can be used to improve conditions more broadly.
42. However, the same principle can equally apply in reverse: as conditions are eroded on one agency with low collective bargaining power, this can flow on to other agencies that will come under pressure to match a new lower standard of pay rises and conditions. With the increased push towards individual contracts, this is an anticipated consequence of the Federal Government's industrial relations agenda for the public sector.
43. One of the concerns held by the CPSU with respect to the Federal Government intentions to refocus the employment relationship onto individual agreements is the extent to which true innovation in areas such as work and family will suffer.

44. Collective pressure has led to these improvements, and whilst employers can see the benefits in introducing these measures, they have ultimately all had to be hard-won through collective bargaining. The fact that the Federal Government and employer groups opposed the recent Test Case on family conditions is proof of the CPSU concern.

### **AWAs are generic, non-individual contracts**

45. The CPSU experience of individual agreements to date is that they predominantly mirror what has been negotiated collectively, and do not markedly differ, between agreements. It is also simply not the case that AWAs are tailored to suit individual needs; on the contrary, in CPSU's experience they are largely "pro forma" documents that give no capacity for employees to negotiate any of the terms or conditions. They are offered on a "take it or leave it" basis.

46. A CPSU member in Centrelink tells us that:

*Some staff in my section decided to accept an AWA and tried to negotiate their conditions eg a 3% annual salary increase. They reported that they were told no conditions were negotiable, they accepted the proforma AWA or not.*

Another member reported that:

*I have been on an AWA since 4-9-2001. Back then, when I requested a clause in my AWA be removed (concerning the possible re-location of my workplace to another capital city), I was told that I was being offered a standard Agreement and nothing could be changed.*

An AWA information pack given to new staff in Telstra is even more explicit where it states:

*Can I vary the wording in the AWA?  
No. The wording in the body of the AWA must not be changed in any way.*

### **Federal Government double standards**

47. The negative focus by the Government on so called "pattern bargaining" threatens to limit the spread of outcomes. Bargaining for widespread change is a slow process; one agreement, one enterprise at a time. Objections to pattern bargaining make it more difficult for a universal approach to be taken to solving what appear to be universal concerns.

48. However, this does not stop the Federal Government from adopting a common APS-wide approach as the employer. The Department of Employment and Workplace Relations [DEWR] sets Policy Parameters which all Commonwealth departments and agencies must abide by in industrial

negotiations; for example no department or agency can have an agreement that improves redundancy provisions. Essentially, DEWR is negotiating common wages and conditions for multiple collective agreements across the public service.

49. DEWR also vets every agreement and must approve any deviation from these Policy Parameters. This often results in ridiculous situations; parties agree in principle to an agreement and the Department, not a party to the agreement, sends them back to the bargaining table because they are not satisfied.
50. For example, CPSU has recently been in negotiations with the Australian Communications and Media Authority, an agency recently created by the merging of the Australian Broadcasting Authority and the Australian Communications Authority. The two authorities had different redundancy entitlements prior to the merger and the parties negotiated a compromise position for the new agreement. Despite being fairly negotiated, the proposal was rejected by DEWR.
51. There is a strong contradiction between the rhetoric surrounding the Work Choices Bill and what the Federal Government is practising in the APS with regards to industrial relations.
52. The "Work Choices" legislation proposes to make it impossible to take protected industrial action in pursuit of pattern bargaining claims. However, the prohibition on pattern bargaining is at odds with the way the Commonwealth negotiates collective agreements in the APS.

### **Balancing work and family needs**

53. There are some common themes that come out of the individual public servants attempts to balance their work and family needs. These are:
  - A formal framework of family friendly conditions is seen as essential, although access to those conditions needs continuing improvement and development;
  - A workplace culture where the facilitation of work and family needs is seen as essential as opposed to a hindrance to the performance of work and this must be cultivated down to the individual level;
  - The different needs of caring for the elderly or infirm, as compared to children, must be recognised and often differently accommodated;
  - The cost and availability of childcare remains a major hindrance;
  - Most children require some level of care or supervision well into high school, and yet care arrangements of any kind cease to exist once a child leaves primary school; and
  - The capacity of organisations like the CPSU to affect change will be further eroded by the current trend towards individual employment agreements.

54. To better inform ourselves of the concerns of our members with caring responsibilities, CPSU conducted a web-based work and family balance survey in March 2005. The results are relevant for this submission also. The responses are from real workers with a real experience of trying to balance their work and family lives.

55. In reflecting on life over the last 5 years, respondents were asked whether balancing work and family had become harder or easier. These results were:

- 31% of all respondents said it had become much harder
- 24% said it had become a little harder
- 20% said it was about the same
- 18% said it had become a little easier
- 6% said balancing had become much easier.

In the face of a new assault on working families, vigilance, continued effort, and support of workers in need are required to ensure that things become easier and not harder for workers over the coming years.

## **Awards**

56. A number of CPSU members are employed solely on the basis of the Award. For example, CPSU members employed in call-centres contracted to provide switchboard services to major corporations such as Telstra are generally employed under the *Telecommunications Service Industry Award* or the *Contract Call Centre Award*.

57. These workers typically work in call centres and are almost always employed on a casual basis; so they are entitled to only one hours notice, they receive no annual leave, no sick leave, no public holidays and no redundancy payment, and they are only paid \$19 per hour. These workers are already threatened; they lack job security, entitlements and are not highly paid.

58. Awards such as these have been developed over a number of with the assistance of the Australian Industrial Relations Commission.

59. Given the advent of certified agreements and individual agreements, the level of wages in awards have often failed to keep track with wages and conditions in agreements. This means that not only have employees such as those in call centres failed to gain any improvements in their wages and conditions, they have failed to retain in real terms their wages and conditions.

60. The "Work Choices" Bill proposes to further reduce the number of allowable award matters<sup>5</sup>. This means that these already vulnerable workers will face a further assault on their wages and conditions. By reducing the number of allowable award matters, the proposed

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<sup>5</sup> *Workplace Relations Amendment (Work Choices) Bill 2005* s116

legislation will effectively remove an Award-employee's ability to access a number of entitlements.

61. In addition to excluding these entitlements from Awards, the Bill also proposes to reduce the entitlements employees receive under the current system. For example, it is proposed that all award conditions are to be made basic minimum entitlements, only public holidays declared by the relevant State or Territory government will be recognised and redundancy pay is not allowable if a lower paying position was offered and refused.
62. In undermining the safety-net provided by Awards, the Work Choices Bill leaves these workers open to exploitation. The AFPCS guarantees in the legislation are of little relevance to these casual employees, as it is only the wages guarantee which will apply to them.
63. CPSU and its members are also concerned that agreements can expressly exclude or modify the "key" Award provisions<sup>6</sup>. The Work Choices Bill allows for these provisions to be removed without any compensation in the agreement. This section effectively abolishes the safety-net. No longer in Australia can a worker be assured that his or her conditions, beyond the very basics provided in the AFPCS, are assured.

### **Australian Industrial Relations Commission**

64. The "Work Choices" Bill also proposes to remove most of the powers currently exercised by the AIRC. The CPSU and its members support the AIRC and believe that this institution, as the independent umpire, still has a very important role to play in Australian industrial relations.
65. In the experience of the CPSU the AIRC has been a relatively quick, easy and effective mechanism by which a whole array of industrial matters and disputes have been resolved. It conducts itself independently and impartially, with due consideration to notions such as fairness, equity and good conscience.
66. CPSU and its members are concerned that the "Work Choices" Bill will render the AIRC powerless in conciliating matters arising during negotiations. The Commission will now only be able to conciliate if all parties agree to this process. In our experience it is precisely when parties cannot reach agreement on how to proceed with negotiations that the assistance of the AIRC is needed. By proposing to make this process voluntary, the Work Choices Bill makes the AIRC's powers in relation to bargaining meaningless.
67. The Work Choices Bill also seeks to limit the capacity of the AIRC to resolve disputes. Under the proposed legislation dispute settlement

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<sup>6</sup> *Workplace Relations Amendment (Work Choices) Bill 2005: Explanatory Memorandums* page 16

procedures in agreements do not have to provide a mechanism by which a dispute can definitely be settled. Many industrial disputes will not be solved by voluntary processes and the Work Choices Bill prohibits the use of coercive powers under the model dispute resolution clause<sup>7</sup>.

68. The "Work Choices" Bill proposes to offer the services of private dispute resolution providers in competition with those of the AIRC. The CPSU believes that this will encourage parties to forum-shop; parties will push for a provider who they feel is most likely to deliver the most favourable results for them. Many employers will be able to use their superior bargaining power to ensure that their choice of dispute resolution provider will succeed.
69. The CPSU and its members see no reason for the privatisation of dispute resolution as advocated by this bill. Private providers lack legitimacy; they cannot claim to be impartial and independent arbiters or observers when they are essentially chosen on their credentials. The lack of legitimacy that will inevitably surround these providers will result in greater disputation over their procedures, a greater reluctance to accept their findings and overall a less effective dispute resolution mechanism.
70. CPSU and its members support a dispute resolution system with legitimacy; we support a system that provides fair and effective resolutions in an independent and impartial manner. The CPSU and its members believe that we have such a system in the AIRC and oppose the proposed amendments to its operations.

## **Conclusion**

71. CPSU hopes that this submission has demonstrated how the Federal Government "Work Choices" legislation threatens many of the family friendly conditions that public sector working families in the ACT currently enjoy.
72. CPSU is committed to working to maintain and grow the collective bargaining capacity of the public sector, and to defending the hard-won conditions that are found in union-negotiated collective agreements.
73. CPSU know that the spread of individual contracts, or AWAs, will negatively impact on the existing collective bargaining capacity but believe that our members understand the many benefits of having the expertise of the CPSU at their bargaining table in negotiations.
74. Furthermore, CPSU will continue to campaign under the banner of "Your Rights at Work – Balance, Choice, A Voice" and encourage our

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<sup>7</sup>*Workplace Relations Amendment (Work Choices) Bill 2005 s176D (4)*

members to participate in ACTU-led activities as part of this ongoing campaign until the next Federal Election.

**Stephen Jones**  
**Assistant National Secretary**  
**Community & Public Sector Union (PSU Group)**

¶If Tony Abbott is now saying he is going to withdraw that choice [between AWAs and non-union agreements], . . . that completely contradicts his own position.¶

— Adrian O'Connell

## Cabinet submission leaked

# New bid to crush PS union

**VERONA BURGESS,**  
Public Service Reporter

The Minister for Employment and Workplace Relations, Tony Abbott, is taking new steps to crush unionism in the Australian Public Service.

A confidential Cabinet submission obtained by *The Canberra Times* reveals Mr Abbott is planning to force public servants to sign non-union, individual Australian Workplace Agreements.

He also wants to ban union-based certified agreements.

The submission deplors the low use of AWAs and the declining level of non-union agreements in the Public Service.

The measures will be seen partly as payback for his own department staff, who have insisted on a union-based agreement and will vote on it this week.

The Community and Public Sector Union said the moves would damage the integrity of the Public Service and be an attack on public servants' freedom of choice.

The Cabinet submission said the Government as employer had fallen noticeably behind other industry sectors in workplace reform.

It blasted departments and agencies for their conservative approach, saying many were reluctant to use AWAs because of the strength of union reaction, opposition from their own managers and the perceived administrative burden.

It said the Government must practise what it preaches if it

wanted the private sector to actively pursue workplace reform.

It recommends that:

- Individual AWAs be compulsory for all new public servants.
- All jobs be advertised on the basis that the successful applicant be offered an AWA.
- All promotions and transfers resulting from advertised vacancies be contingent on AWAs.
- Agency heads must offer AWAs to all employees.
- All certified agreements must be negotiated directly with employees under the non-union Section 170LK of the Workplace Relations Act.
- Pay increases must be kept in line with wage movements in the wider community.
- The portfolio minister must approve certified agreements negotiated by statutory authorities.
- Agreements must be simple and flexible, supporting agency productivity and performance.
- The Public Service Commissioner, Andrew Podger, be

asked to amend public-service directions to make promotions and transfers contingent on AWAs.

However, it admitted Mr Podger, as a statutory officer, could not be compelled to amend them and they could also be overturned by Parliament.

The National Secretary of the CPSU, Adrian O'Connell, said yesterday that some of the recommendations might contravene the Government's own financial management legislation and would also be an attack on the merit principle.

"If a person was given a job because he or she was prepared to accept an AWA but another candidate was not, it would be a recipe for disaster," he said.

AWAs and non-union agreements had been available as a choice since 1996. "They are educated, intelligent and generally sophisticated enough to know what's in their own best interests. If they have made the choice to have agreements negotiated by the CPSU, then that is their choice.

"If Tony Abbott is now saying he is going to withdraw that choice, which is available to others in the workforce, that completely contradicts his own position. It's a discredited agenda that has already failed in Victoria, Western Australia, South Australia and Queensland and has caused major damage to those public sectors."

The submission said only 5 per cent of the Australian Public Service had taken up AWAs, with less than 1 per cent below senior executive level.

Non-union agreements had dropped from 44 per cent to 35 per cent.