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Restaurant & Catering Australia

Restaurant & Catering Australia (R&CA) is the peak national organisation representing the interests of restaurateurs and caterers.

The Association is a federation of State Associations that work together on matters of national importance. The State Associations have a combined membership of 7,000. There is an R&CA member restaurant and catering association in every State and the Australian Capital Territory.

The Restaurant Industry

The Australian Bureau of Statistics reported 37,699 restaurant, café and catering businesses that are registered for GST in 2004. Since that time business count data for the whole of Division H (Accommodation, Cafes and Restaurants) has grown substantially albeit tailed off in 2007. On the basis of this data it is estimated that the number of café and restaurant businesses in Australia in 2008 was approximately 40,000.

Of these businesses, 79% employ 20 people or less. There are 161 restaurant, café and catering businesses Australia wide that employ in excess of 200 people¹.

Meals out accounted for \$28.6 Billion in sales in 2009 (based on an estimate of December 2009 turnover). This was 8.7% up on the previous year (2008)². *Meals out* includes turnover from cafes, restaurants and catering services and quick services restaurants (including take-away).

The restaurant, cafe and catering turnover for the month of November 2009 was \$1,438 Million. This was 14.5% up on turnover in the same month in 2008. This demonstrates the strength and resilliance of the sector.

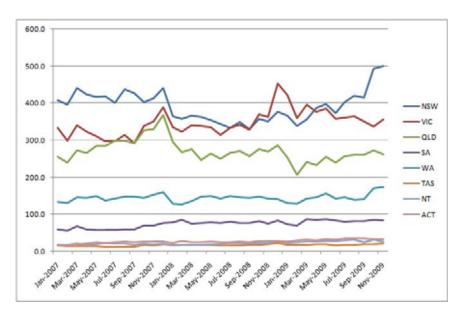


Figure 1 – Expenditure in Restaurants, Cafes and Catering Services Australia, January 2007 – November 2009

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ABS Counts of Australian Businesses, including Entries and Exits, Jun 2003 to Jun 2007

² ABS Retail Trade

Despite sustained revenue, a report released by the Australian Bureau of Statistics³ in April 2008 shows a slowing in restaurant profits (as forecast by the R&CA) with overall net return sitting at 3.6% of turnover and small businesses (under 5 employees) facing an <u>average loss</u> of -0.3%.

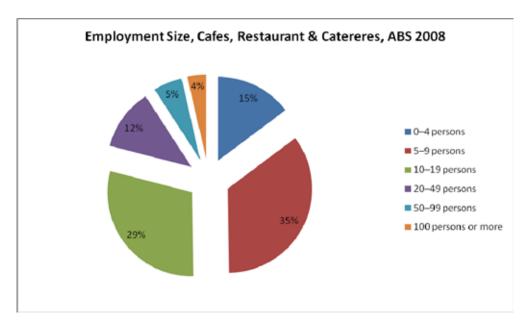


Figure 2 – Employment Size, by Business, Restaurants, Cafes and Caterers – 2006-07

The largest share of employment is between businesses with 5-9 Employees (at 35% of the businesses). The average restaurant employs eight people which is in this band of operations. This is also the strongest band of profitability at 5.6% profit after taxⁱ.

In addition to being small businesses, many restaurant and catering businesses are not corporations. As evidenced below, nearly one third of restaurants are operated by sole-traders or partnerships.

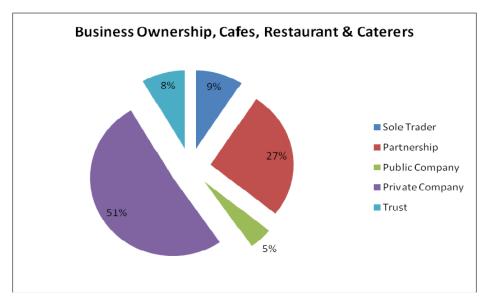


Figure 3 – Business Ownership Type, Restaurant & Catering Operations Report, R&CA, 3rd Edition.

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³ Cafes and Restaurants Industry Survey, ABS 8655.0

Over one third of restaurant, café and catering businesses (36%) are located in New South Wales, 27% of Australian restaurants are located in Victoria, 18% in Queensland, 4% in the Territories.

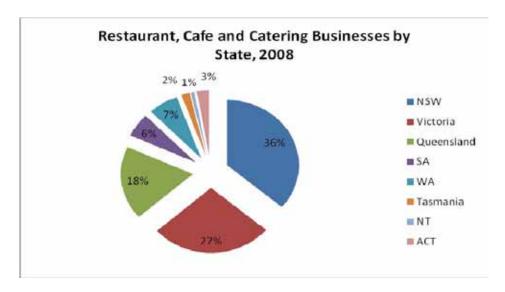


Figure 4 – Proportion of Restaurants by State

Restaurant, café and catering businesses are labour intensive businesses with over one-third (35%) of costs being wage costs. This opens the industry up to increased regulatory burden on the basis of addition regulatory costs the focus on employment.

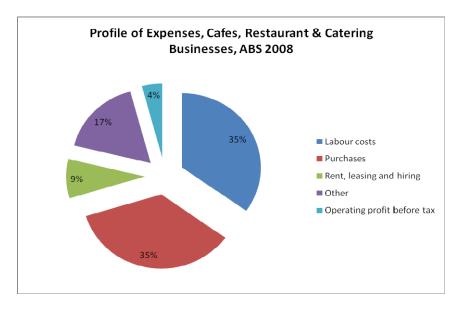


Figure 5 – Expense Profile, Restaurants, Cafes and Catering Businesses

Restaurant Industry Employment

The Employment Outlook publication from the Department of Education, Employment and Workplace Relations reported 464,300 people employed in the cafés and restaurants in February 2009. The projection in the report is for a growth of 2.2% per annum in employment in cafes and restaurants (10,214 additional employees each year).

Nearly half (47%) of the employees in the industry as engaged as casuals with 39% as either permanent of part-time. 14% of the people working in the industry are working operators(either as partners, sole-traders or salaried directors).

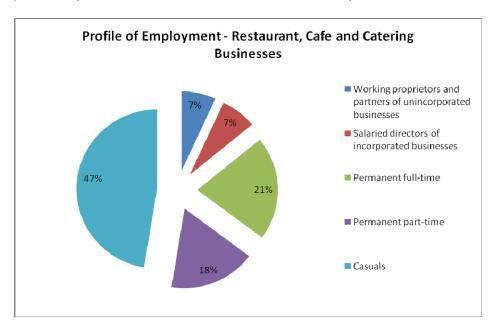


Figure 6 – Employment Profile, Restaurants, Cafes and Catering Businesses

The Regulatory Burden in the Restaurant Industry

Government regulation has increased in its ranking as a barrier to operating an effective restaurant business. In 1998 17% of respondents rated it as a barrier, by 2003 it had reached 47%. The restaurant and catering industry reports barriers and success factors to operating restaurant and catering businesses in its benchmarking report released every two years. Figure (v) below details the proportion of responses in each area of regulation.

Theme/ Difficulties and obstacles	% of respondents describing factor 2003	% of respondents describing factor 2001	% of respondents describing factor 1998
GST	47%	32%	-
Government regulations	47%	23%	17%
Government taxes and charges	47%	16%	16%
Staff related difficulties	42%	42%	47%
Payroll costs	42%	20%	27%
Competitors	37%	9%	27%
Overall Paperwork	37%	7%	-
Workers compensation/superannuation	32%	4%	8%
Penalty rates / IR	26%	17%	8%
Local Government Council Regulations	26%	5%	-
Operating costs	16%	16%	31%
Unfair dismissal laws	11%	3%	3%
Rent costs	5%	5%	4%
Smoking Regulations	-	3%	-
Long hours	-	3%	4%

Figure 7 – Proportion of responses in regulatory areas

In a report by the then Office of Small Business, the areas of regulation impacting on restaurant and catering businesses were mapped by the origin of the regulation and the frequency of the task. The outcomes are detailed in Figure 6 below.

Regulation	Area of Government	Ongoing paperwork	Frequency	Fee
Business Name Registration	State	√	Every 1 or 3 years	✓
Australian Business Number application	Commonwealth		Once only	
Registration Pay as You Go Witholding	Commonwealth		Once only	
Goods and Services Tax Registration	Commonwealth		Once only	
Development approval	Local Govt		On start up; as required	✓
Business Activity Statement	Commonwealth	√	Monthly/ Quarterly	
Income Tax Return	Commonwealth	✓	Annually	
Tax file number declarations – new employees	Commonwealth	✓	As required	
Superannuation Guarantee	Commonwealth	✓	Remittance quarterly	
Centrelink forms	Commonwealth	✓	As required	
Occupation Health and Safety requirements	State	✓	As required	
Workers compensation	State	√	Annual renewal	
Liquor Licence	State	Varies	Varies	✓
Food Hygiene licensing/inspections	State/Local Govt	Varies	Varies	✓
Food Hygiene requirements	State/Local Govt			
Agreement to discharge trade waste into sewers.	Local Govt	√	Varies	✓
Employment Awards	Commonwealth/State			
Apprentice/trainee awards and arrangements	Commonwealth/State	Varies	As required	
Unfair dismissal	Commonwealth/State			

Figure 6 – Areas of Regulation - Office Of Small Business Regulatory Compliance Case Studies Pilot Hospitality Sector

Background

It is understood that the terms of reference of the Annual Review of Regulatory Burdens on Business - Business and Consumer Services require the Commission to identify specific areas of Australian Government regulation that:

- were unnecessarily burdensome, complex or redundant or
- duplicate regulations or the role of regulatory bodies, including in other jurisdictions.

This submission aims to describe the areas of **the greatest regulatory burden** for restaurant and catering businesses. In addition R&CA has attempted to quantify the burden and proposed solutions.

Areas of Regulation

The areas in which Restaurant & Catering Australia believes that regulatory burden could be lifted from restaurateurs and caterers are:

Superannuation

Restaurant and catering businesses often describe the compliance burden related to the administration of their requirements under the Superannuation Guarantee. The key complaint from businesses about the Superannuation Guarantee was the requirement to make payments for staff who earned as little as \$450 a month. Businesses regarded this threshold as inappropriate because:

- the industry has a transient workforce, with many staff working casually for short periods and then leaving - one restaurant estimated that it employed 200 different people in one year.
- the threshold has not increased while award wages have, which has lowered the effective threshold;
- making very small superannuation payments to many staff is an administrative burden on the business and of questionable value to staff.

The most favoured changes to the system to address this problem were the addition of a time threshold, for example three months, before superannuation became payable or an increase in the dollar value of the threshold.

RECOMMENDATION

Restaurant & Catering Australia recommends that Government change the current superannuation arrangements such that :-

- The Superannuation Guarantee threshold is raised to \$1800 per quarter (from \$450 per month) and that it be indexed to CPI.
 - That superannuation contributions for working holiday makers be contributed to a training and education fund.

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 $^{^4}$ Quantification of costs are based on very imprecise estimates – They have been included at the request of taskforce members to provide some guidance as to the magnitude of burdens and solutions.

It is estimated that with 53% of the workforce being casual that restaurateurs would save 5% in their superannuation bill as a result of the raising of the threshold. This would save the average restaurateur \$630 per annum.

This problem is far more pronounced since the Restaurant Industry Award 2010 took effect on January 1, 2010. Rather that lessening the burden, the award has increased it by lowering the threshold to \$350 per month.

Food Safety Regulation

Food safety is regulated through the Food Regulatory Agreement. Regulation is based on national food standards that are enacted by the States / Territories and enforced by Local Government.

Restaurateurs and caterers all regard food safety as being an overly regulated area. The industry does not question the need for food safety but do not agree with the majority of approaches being taken to introduce such regulation. The thrust of regulation is a process based model often referred to as HACCP (Hazard Analysis Critical Control Point). Food Safety Plans are the vehicle through which this approach to food safety is regulated.

Businesses in Victoria are the only foodservice businesses required at this point to have a food safety plan. They indicate that the monitoring and record keeping associated with their Food Safety Plans requires significant resources. In the main they question the effectiveness of the record keeping requirement in ensuring good hygiene practices.

A body of work undertaken by the Commonwealth in 2003-04 shows clearly that there is no cost: benefit to introducing food safety plans for restaurant businesses. It also shows there is marginal benefit to plans for other businesses (such as caterers). What is clear, however, is that food safety is best achieved by training food handlers in basic hygiene skills. Consideration of these outcomes has lead to a review of the Food Minister's policy on food safety plans.

Restaurant & Catering Australia is keen that, as part of the review of the Food Ministers Guidelines, currently being undertaken, in relation to food safety plans, that a new approach be developed that encourages food safety plans to be developed solely as best practice or punitive measure and basic food handler training be mandated.

RECOMMENDATION

That as part of the review of the Food Ministers Guidelines on food safety plans that a new approach be developed that encourages food safety plans to be developed solely as best practice or punitive measure and basic food handler training be mandated.

Quantification⁵

In the OSB study, businesses in Victoria estimated that the ongoing costs of Food Safety Plans were 4 hours per week. This equates as a supervisory wages to approximately \$4,500 per annum. Taken across the industry (if required nationally) Food Safety Plans would cost \$130 Million per annum to main. In contrast mandating food safety training, would cost in the order of \$5.3 Million per annum if every new employee was trained.

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⁵ Ib id

Industrial Requirements

It is clear from considerable research undertaken in the past years that industry associations are where small businesses turn to for advice on employment matters. Restaurateurs, café owners and caterers are no exception⁶.

The Government's extensive plan for reforms to the industrial relations system is also well understood. The change to the IR system will be constant through 2009 and 2010 from the transition Bill through to the implementation of the Fair Work Bill 2008 and the associated regulations.

The eventual success of the IR reform process (and the compliance with its content) is a direct result of the level of understanding that small business employers (including restaurateurs and caterers) have of the detail of the system.

Restaurant & Catering Australia urges the Government to adequately resource the implementation of industrial relations reforms through an information campaign with industry associations.

Restaurant & Catering Australia acknowledges (and appreciates) the investment in education through the Fair Work Education and Information Program. This program requires additional resources to cover the considerable demand being experienced from small businesses in the restaurant, café and catering industry.

RECOMMENDATION

That the Commonwealth Government adequately resource an employer education campaign on IR changes (both through the Federal changes and the referral of powers by the States), through industry associations.

Training

The administrative arrangements around apprenticeship and traineeship has attracted some attention in the debate over regulatory burden. In a recent report for the National Skills Shortages Strategy⁷ participants in focus groups reported that whilst Registered Training Organisations (RTOs) were doing much of the paperwork on their behalf, there was a significant workload in administration of apprenticeship. In some locations participants believe it is a major drawback to recruitment and believed the New Apprenticeships Centres (NACs) were not assisting as much as they could. This is of particular concern for small business owners who lack the resources for managing trainees and apprentices as well as their other employees.

 6 How SMEs Access Information: Sensis Business Index Special Report for the Department of Industry, Tourism and Resources April 2004

 $^{^{7}}$ The National Skills Shortage Strategy is a program funded by the Federal Department of Education, Science and Training

Specific problems reported through the Office of Small Business Regulatory Case studies included:

- difficulty accessing incentive payments two businesses indicated that they had been deprived of the first incentive payment because earlier studies by the apprentice had been deemed part of the apprenticeship.
- payments where an apprentice was "poached" by another business businesses claimed that in these circumstances the old employer might be deprived of a payment it deserved, while the new employer got paid without making much contribution to training the apprentice.

RECOMMENDATION

Restaurant & Catering Australia suggests a review of the administrative and employer incentive arrangements, surrounding the New Apprenticeship Scheme, with a view to minimising the burden on employers and should be modified to (a) focus on occupations in skill shortage and (b) encourage the retention of an apprentice by the employer who has invested in their training particularly in the first two years.

Fringe Benefits Tax

In the Office Of Small Business Regulatory Compliance Case Studies Pilot Hospitality Sector it was reported that 'A significant proportion of the businesses interviewed objected to the Fringe Benefits Tax (FBT) on business meals, because of the effect it has on their turnover'.

In its 'Committed to Business Statement' in 2004, the Australian Government extend a number of Fringe Benefits Tax (FBT) exemptions to ensure these remain relevant and accessible to small business (e.g. extending the FBT exemption for employer-provided remote area housing and extending the exemption for work-related items such as laptop computers to include portable printers as well as personal digital assistants).

In its Tax Blueprint the Australian Chamber of Commerce and Industry cites FBT as 'the worst of all taxes from a compliance perspective' with 23% of revenue collected being expended on compliance.

The Ralph Review of Business Taxation recommended several reforms to FBT that have never been adopted.

In an Australian National Audit Office report released on the 2 June 2005 titled 'Administration of Fringe Benefits Tax', the Australian Government concluded that 'complying with the requirements of FBT legislation can be relatively complex and resource intensive for many employers including Australian Government public sector entities.'

In the same report the ANAO found that the complexity was such that there is 'an increased risk that entities would not fully meet their FBT obligations'.

GST has dramatically increased FBT compliance cost. The Department of Foreign Affairs and Trade alone paid \$25.7 Million in FBT in 1999-2000 with their FBT compliance increasing 129% as a result of GST⁸.

⁸ A question on notice, in the Senate, 7 June 2000 to the Minister representing the Minister for Trade.

The current FBT regime is in conflict with the Workplace Relations platform that employee and employer should be able to tailor the relationship to meet their individual needs. Only 8% of agreements contain flexible remuneration arrangements as a result of FBT arrangements⁹.

RECOMMENDATION

Restaurant & Catering Australia believes that the recommendations of the 2000 Review of Business Tax should be adopted and all business meal expenditure should be removed from FBT coverage and made non-deductible¹⁰.

Occupational Health & Safety

In the Workplace Relations Workgroup report for the Restaurant & Catering Industry Action Agenda (undertaken between 2003 – 2006), it was stated that :

Over regulation in the area of occupational health and safety is also a concern to the <restaurant and catering> industry with the ability for small and medium size businesses to adhere requirements reduced due to the complexity and number of regulations, standards, codes of practices and alike.

A concern also arises over the imbalance between education and prevention and enforcement that exist within some sectors of the system. A preoccupation with prosecution and penalties at the expense of a cultural of mutual responsibility and education and prevention must be overturned.

The importance of education and training cannot be stressed highly enough. Risk management and prevention strategies must be carefully articulated throughout the workplace and operators, particularly in small business who must be supported to ensure their effective implementation

The Office of Small Business Regulatory Compliance Case Studies Pilot Hospitality Sector stated that:

'businesses pointed to the need for better information for businesses on occupational health and safety requirements, stressing the need for information which was targeted to their specific business type (for example, a caterer wanted information specific to catering). A Queensland business said it would be helpful if someone could come and advise the business on what steps it should take.'

The recommendation in the Restaurant & Catering Industry Action Agenda was to promote national consistency in workers' compensation and workplace health and safety laws. The strategies suggested to achieve this were :

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⁹ The Supply of Non-Cash Remuneration, Lyons and Ward, UWS, 2005

¹⁰ To confirm the legitimacy of a business expense, it is proposed that the reforms are limited to situations where an ABN is exchanged as part of the transaction, including where the business representative is the holder of a company credit card or where a company has a direct account with a restaurant.

- Work actively with industry, industry bodies, governments and other key stakeholders to progress a model for a national framework for workers' compensation that incorporates nationally consistent, premium setting, benefit structures and insurance regulation and national insurance mechanisms
- Work with governments and other key stakeholders to develop more balanced workplace health and safety arrangements that shift the emphasis from enforcement to education and prevention, where employers and employees accept mutual responsibilities
- Develop and promote practical workplace health and safety guidance materials for the industry

Restaurant & Catering Australia acknowledges that the Government is working actively toward this objective. The Association is keen to stress that the benefit to industry, of the OHS harmonisation, will be gained by ensuring that all jurisdictions have the same approach to the industry areas.

RECOMMENDATION

That the Australian Government ensure, that when harmonised OHS responses by industry are coordinated, with industry associations (perhaps by a lead state in each industry) by industry to ensure consistency across industry groupings.

Other Areas

In the Office Of Small Business Regulatory Compliance Case Studies Pilot Hospitality Sector several other areas of regulation were mentioned. The content in this section included:

Workers compensation - There was a degree of dissatisfaction with workers' compensation requirements, and especially with the claims process. One business had successfully defeated two claims it considered frivolous, but at considerable cost. Another business complained that claims resulting from an armed robbery had led to a 25 per cent increase in premiums, even though, as the business perceived it, the event was clearly not its fault.

Council regulation - There was considerable variation in attitudes to Local Government, but overall council regulation was not a major issue for the businesses interviewed. A number of businesses complained that fees charged by councils for footpath dining or signage were basically revenue raising and were not justified.

Centrelink forms - While most businesses interviewed had been required to complete Employment Verification Reports, or Employment Separation Certificates for Centrelink, they were not widely perceived to be a significant burden. Two businesses expressed concern about the forms. One said it had been asked to provide the same information on the same employees many times over, while the other had difficulty providing detailed historical information on an ex-employee's wages.

Fees for background music - The requirement to pay fees in order to play recorded music was identified as a significant annoyance by 2 of the businesses interviewed. While not a significant cost, it was seen as unjustified that businesses such as restaurants should have to pay to play a CD they have already purchased.

Business Entry Point - One business in process of setting up had used the Business Entry Point as a source of information and had attempted to use the site to apply online for the Australian Business Number and other tax registrations. The business owner suggested that it would be helpful to have more up front information about the circumstances in which a business needs to apply for various registrations, and the information which will be needed to complete the application. Investigation showed that the Australian Business Register site does include the relevant information.

ⁱ ABS Cafes, Restaurants and Catering Services, 8655.0, 2006-07, published 2008