



Restaurant
& Catering

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8 August 2014

Dr Kathleen Dermody
Committee Secretary
Senate Economics References Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Dr Dermody

Restaurant & Catering is the peak national organisation that represents the interests of Australia's 35,000 restaurants, cafes and caterers.

Restaurants, cafes and hospitality providers are an important part of Australia's economic and social fabric. Hospitality forms a critical part of the visitor economy which contributes more than \$134 billion to the economy each year. There are over 35,000 café, restaurant and takeaway businesses in Australia, contributing to 666,300 jobs, and delivering \$21.1 billion in earnings to the economy. These businesses are small businesses; with 76% of these organisations employing 19 people or less.

The Association appreciates the opportunity to submit to the Senate Economics References Committee inquiry in relation to the need for a national approach to retail leasing arrangements.

The restaurant, café and catering sector is considered, by the ABS, to be included in the Retail Trade. In the Retail Trade Australia report (ABS 8501.0), Cafes, restaurants and catering service is an industry sub-sector.

The attached Industry Benchmarking Report found that the vast majority of respondents (88.4 per cent) indicated they lease the land on which their business operates, with 87.5 per cent indicating that the building in which their business operates was rented. This is a marked increase from 2012 survey results which found that 77 per cent of respondents rented both the land and building in which they operated.

Restaurant & Catering does question the premise of the inquiry that a national approach to retail leasing arrangements would create a fairer system and reduce the burden on small to medium businesses. Several past attempts to harmonise State-based regulation has led to a more-onerous outcome for individual small businesses.

Restaurant & Catering has participated in several State-based inquiries into various aspects of retail leasing. The most recent of these was in New South Wales, the Association submission is attached.

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In order to support the nationalisation of retail leasing arrangement, the Association would need to be convinced that this approach would be of benefit to individual businesses. In particular business, in the restaurant and catering sector at least, would be concerned if policy practice, such as in the nationalised competition and consumer area, were adopted in relation to retail leasing. As an example, a recent change to the consumer law and regulations, in relation to surcharges on menus, took three years to complete because of the processes of the Ministerial Council and secretariat.

Notwithstanding these concerns, the restaurant and catering sector faces significant issues in relation to leasing. In the above-mentioned Benchmarking Survey, respondents report marked increases in occupancy costs across the board including rent, rates and taxes, and property insurance for the 2012-2013 period. The largest increase was recorded in rent, with respondents indicating this expense accounted for 9.9 per cent of expenses during the 2012-2013 period. Rates and taxes also increased to 3.1 per cent compared to a figure of 2.4 per cent in 2011-2012. Property Insurance totalled 1.5 per cent of total business expenses in 2012-13; largely in line with figures recorded in 2011-12 and 2010-11.

In determining lease arrangements, a majority of businesses indicate rent reviews are based on CPI increases (57.9 per cent), market review (19.8 per cent) or a mix of both (13.2 per cent). However, 9.1 per cent of businesses indicated rent reviews are determined based on turnover data.

R&CA members perceive a significant imbalance in the bargaining power between landlord and tenant, particularly with larger shopping centres. The imbalance often results from the additional investment restaurant owners make above and beyond rent paid, including funds contributed to fit out, marketing, and the generation of goodwill. This means that at the time of lease renegotiation, it can sometimes be more critical for the operator to re-secure the lease than the landlord.

Turnover data is an area of considerable contention for restaurant owners. The ability of landlords to request turnover data and make decisions based on this information results in inequity for operators in the decision making process. There is no transparency in how this information is used across multiple tenant arrangements, particularly in larger shopping centres. Rarely do landlords grant struggling tenants rent concessions following a review of turnover data, yet rents are revised upwards based on favourable earnings recorded.

Furthermore, the disclosure of turnover data does not allow operators to balance leasing costs over the life of a lease, which is often necessary given the cyclical nature of the hospitality industry. Operators require certainty of tenure in order to operate their businesses effectively. This, coupled with the capacity for landlords to increase rent based on turnover data can create considerable uncertainty as to a restaurant's operating environment.

On the individual aspects of the Terms of Reference:

First right of refusal

In the context of the NSW Retail Lease Review, the Association said:

Operators require certainty of tenure in order to operate their businesses effectively. This, coupled with the capacity for landlords to increase rent based on turnover data can create considerable uncertainty as to a restaurant's operating environment. R&CA would support methods to improve the ability of tenants to negotiate a new lease at the end of term, namely last right of refusal.

Bank guarantees

In the context of the NSW Retail Lease Review, the Association said:

The Act should be explicit about when bank guarantees can be drawn down, including the requirements for informing tenants when this has occurred.

Returning a bank guarantee to a lessee within 30 days would be considered a reasonable timeframe to return funds.

National lease register

In the context of the NSW Retail Lease Reviews, the Association said:

R&CA supports the findings of the PC Report 2008 and believes a register summarising the financial arrangements of a lease(s) should be made publically available (and in a downloadable format).

R&CA supports the recommendation of recording side deals in a summary sheet. This process ensures consistency of information being communicated to lessees.

Disclosure of incentives

In the context of the NSW Retail Lease Review, the Association said:

R&CA would caution against harmonizing Disclosure Statements simply to mirror the work of other states. However, where a need has been identified, there is the potential to streamline Disclosure Statements to reduce red tape and make it simpler for both parties to understand their obligations under the agreement.

The Association also said that:

Full disclosure of all outgoings including management fees would provide greater clarity to tenants. R&CA is supportive of implementations made in Victoria with regards to the disclosure of fees.

R&CA believes that the disclosure of outgoings does not necessarily need to be reportable, but there is a need for these outgoings to be disclosed prior to any agreements being entered into.

Provision of sales results

In the context of the NSW Retail Lease Reviews, the Association said:

Turnover data is an area of considerable contention for restaurant owners. The ability of landlords to request turnover data and make decisions based on this information results in inequity for operators in the decision making process. There is no transparency in how this information is used across multiple tenant arrangements, particularly in shopping centres.

Rarely do landlords grant struggling tenants rent concessions following a review of turnover data, yet rents are revised upwards based on favourable earnings recorded.

Furthermore, the disclosure of turnover data does not allow operators to balance leasing costs over the life of a lease, which is often necessary given the cyclical nature of restaurant operations. R&CA advocates that the collection of turnover data should not be required or used in the determination of lease arrangements.

In summary, Restaurant & Catering believes that the restaurant, café and catering sector is in the retail trade and has a significant stake in the issue of retail leasing. There are many issues that confront businesses in this sector, which are overwhelmingly small businesses, in relation to their leases.

The Association questions, however, whether a process of nationalisation will be a forward step for the interests of these businesses in this regard.

Yours sincerely

John Hart
Chief Executive Officer