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Executive Summary

Restaurant & Catering Australia is the peak national organisation representing the interests of Australia's 37,700 restaurateurs and caterers.

Restaurant and catering businesses turned over a record \$12.8 Billion last year following two years of gentle increases to overall revenues. Whilst in the past slow growth in revenue and faster growth in the number of businesses has been the key feature, profitability has been in severe decline.

Restaurants, cafes and catering businesses return between 2 and 4% in net profit on turnover. This has been decreasing as wages and the cost of food increase much faster than revenue to the average restaurant or catering business.

The restaurant industry employs 188,102 people. The restaurant industry is the majority part of the hospitality industry. Employment in the industry is substantially casual, is more bottom heavy than other industries and is made up of business units employing an average of eight people.

Each of the major occupational groups of waiters, kitchenhands, bar attendants and cooks / chefs are in significant shortage.

In the future, growth in the sector will slow but continue to be positive. Profitability is likely to continue to erode as the cost of labour particularly continues to rise. Even with this being the case the industry will experience the third strongest employment growth of any industry to 2011 and require 65,000 new entrants in the next five years.

The restaurant and catering industry is now actively involved in promoting skilled migration to individual restaurateurs and caterers through a range of initiatives and has experienced a number of challenges getting small businesses to work with the immigration system.

The Association understands the temporary business migration and in particular the 457 Visa, is designed as a workforce initiative for Australian employers. As such, the migration program should play its role in addressing the skills and labour shortage that Australian industry faces.

In administering the temporary skilled migration program, it is suggested that the objective of the program be front of mind - *For lawfully operating Australian and overseas employers to employ approved skilled workers for temporary vacancies in particular occupations required in Australia. Temporary visas can offer a pathway to a permanent visa.*

It is suggested that the following would assist in the operation and administration of the temporary skilled migration program in Australia;

- Continue to operate the Industry Officer Outreach program in particular in the restaurant and catering industry;
- Skilled Front of House (Hospitality) Occupations should be added to the Migration Occupation in demand listing.
- Perth should be classified as a region for immigration purposes.
- Labour Agreements should be open to be negotiated around standard conditions providing the agreement meets the objectives of temporary skilled migration to Australia is *'For lawfully operating Australian and overseas employers to employ*

approved skilled workers for temporary vacancies in particular occupations required in Australia. Temporary visas can offer a pathway to a permanent visa¹.

- The Minimum Salary Level should recognize the range of occupations in the 'particular occupations' required in Australia and should be reviewed in a manner consistent with other minimum wages in Australia.
- The way in which the MSL is referred to and enforced should be consistent with Workplace Relations arrangements.
- The assessment of nominating employers should be consistent with the objectives of the skilled migration program in determining a business operating 'lawfully'. As such, under the current guidelines:
 - The process of justifying the skill shortage and justifying an adequate record of commitment to training and education, for immigration purposes, should be made easier through streamlining at an industry wide basis².
 - The assessment of financial viability should be open to review and assessment as to whether this is what is best assessed to achieve the objectives of the test.
 - The assessment of industrial relations record should be made transparent and be tightened along the lines of 'should not have been subject to a breach of the Workplace Relations Act 1996 as determined by the Office of Workplace Services'.
- Degree Qualifications for Hospitality Managers should be moved to the 'Professionals Listing' and attract 60 points;
- The points allocated to 'Work Experience' should be expanded to include students who have undertaken a significant work component (say 6 months or 1 Year) as part of the course of study;
- Pilot approaches to unskilled migration in a geographically or occupationally bounded way.

¹ DIAC Website, www.immi.gov.au, 29 January 2007

² Achieved through the signing of a Labour Agreement ONLY FOR COOKS / CHEFS.

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 over 6,000. 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 reports 37,699 restaurant, café and catering businesses that are registered for GST. Of these businesses, 89% employ 20 people or less. There are 124 businesses Australia wide that employ in excess of 200 people³.

The restaurant, café and catering industry had the best year ever (in turnover terms) in 2006. 2006 ended 12.6% up on 2005 with October, November and December setting consecutive all time turnover records. December was over \$1.25 Billion in turnover almost 10% up on the previous Decembers (2002,3 and 4) all of which were around \$1.1 Billion.

A report released by the Australian Bureau of Statistics⁴ in July 2005 (the most recent report in a five-yearly series) shows a slowing in restaurant profits (as forecast by the R&CA) with 63.4% of businesses (the businesses employing less than 10 people) generating less than 2% net profit.

Businesses reported to the ABS an average net profit of 4%, down 16% on the previous survey period (1998-1999). Labour costs have risen an average of 17% from 29.4% of turnover to 34.3% of turnover, demonstrating the need for workplace reform. In the same period turnover increased by 7% among 7.1% more businesses. The slice of turnover is therefore the same on average as in 1998 / 99 but businesses face significantly higher wage bills. This is in part attributable to increases in non-wage labour costs, specifically superannuation and workers compensation.

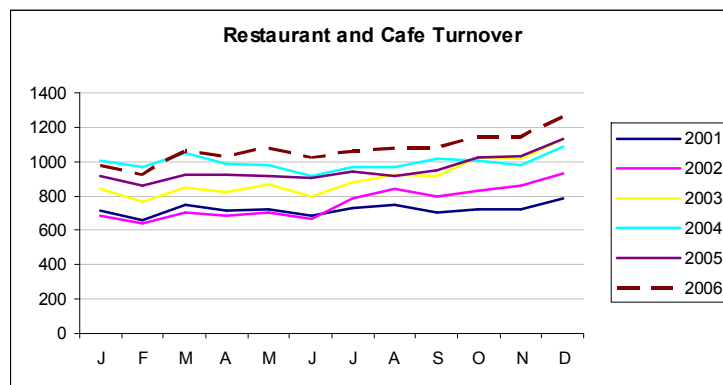


Figure 1- Restaurant Industry Turnover 2001 - 2006

³ ABS Business Counts, 2005, Restaurant & Catering Australia

⁴ Cafes and Restaurants Industry Survey, ABS 8655.0

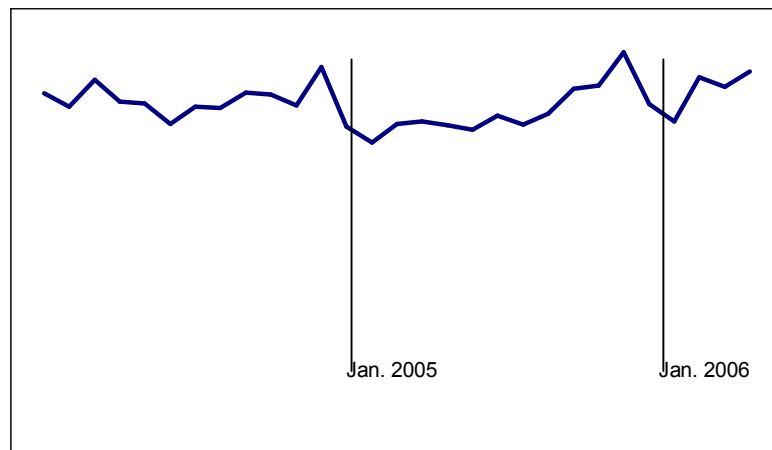


Figure 2 – Time Series turnover Jan. 2004 – May 2006

In most cases in the hospitality industry, half of the businesses in each sector are 'non-employing businesses'. By far the largest number of businesses in hospitality are restaurant businesses now accounting for 55% of all those in the sector. Whilst the majority of businesses in the restaurant, café and catering sector are small employers, they are also account for more employment than any other sector in hospitality.

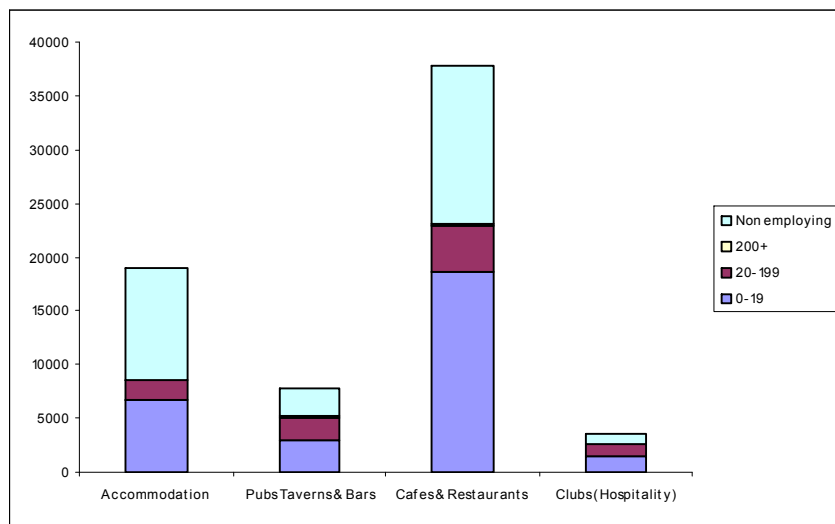


Figure 3 – Hospitality Businesses by Employment Band, ABS Business Register

Restaurant Industry Employment

The Australian Bureau of Statistics Cafes and Restaurants Australia report (released in July 2005), cited industry employment at 188,102 persons. According to ABS Labour Force data⁵, industry wide employment is similar in May 2006 to May 2004 (the closest collection period to the report quoted above). In May 2004 employment in Accommodation, Cafes and Restaurants was 467,500 whereas in May 2006 total employment in the industry was 463,300.

Cafes and Restaurants Australia also noted that 53.4% of employees were casual with permanent full time employees making up 25.4% of the labour force. The proportion of casual workers is more than double the all industry average of approximately 26%. As a result there are more employees subject to loaded up rates than in other industries.

As indicated below, the number of casual employees has been steadily growing by an average of 1% per annum. This casualisation of the industry has been evident over the past ten years. The largest proportion of the restaurant, cafe and catering workforce is part-time females.

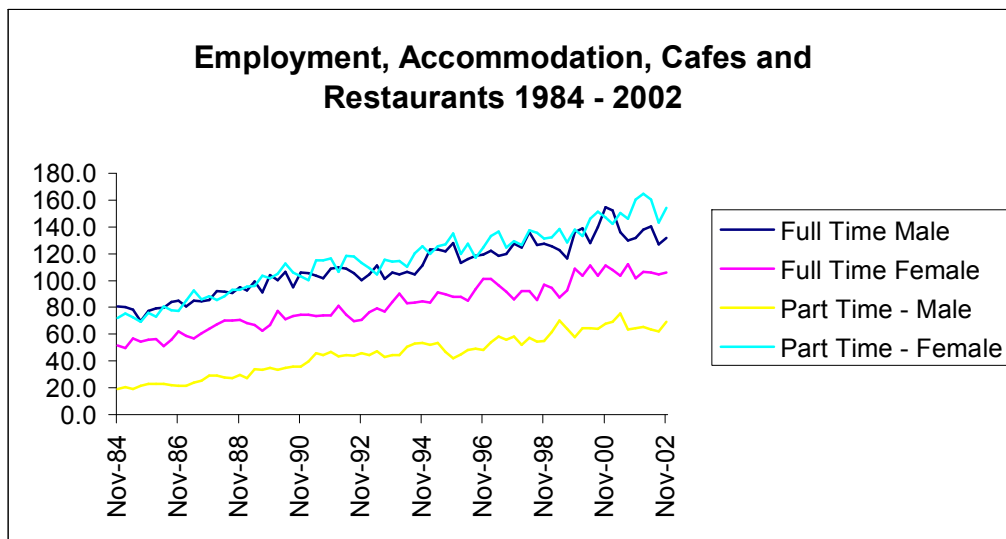


Figure 6 - Employment, Accommodation, Cafes and Restaurants 1984 - 2002

The predominant employment type in the accommodation, café and restaurant industry is 'Self-Identified Casuals'. This type of employment accounts for 49.9% of all employment (including owners and managers)⁶.

⁵ ABS, 6202.0 - Labour Force, Australia, Jun 2006

⁶ ABS Forms of Employment, November 2001, ABS 6359.0

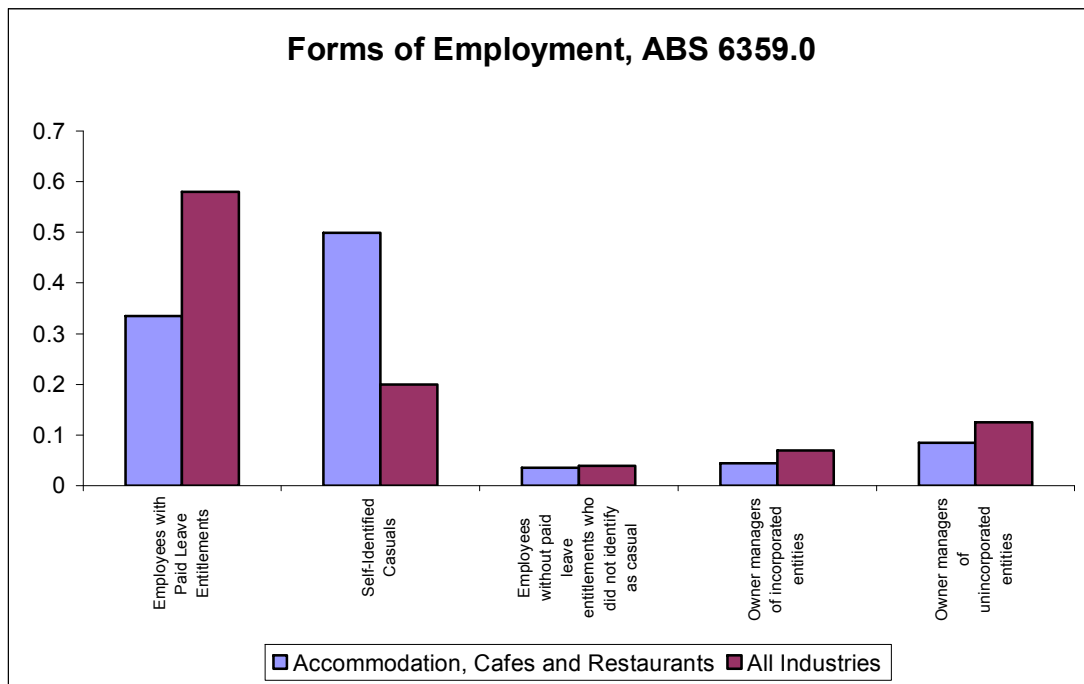


Figure 7 – Forms of Employment, ABS 2001

The labour intensive nature of the hospitality industry also manifests itself in a lower proportion of working operators of overall employees (11.3% in contrast to the all industry average of 21%).

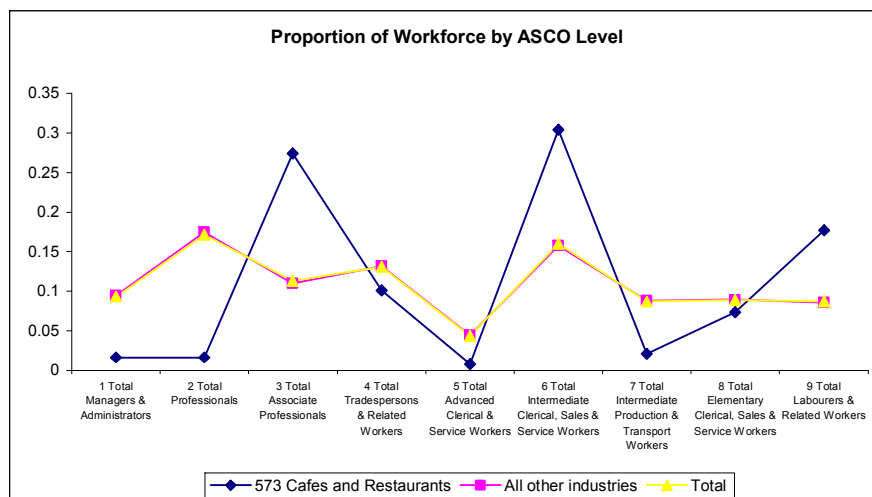


Figure 8 – Proportion of Workforce by ASCO level

Alongside the differences in forms of employment, the café and restaurant industry also has a very different mix in levels of occupation compared to other industries. Café and restaurant employees are far more likely than the average employee to work at operative and trade levels and far less frequently work at the professional and para-professional level.

The major occupations in the wider hospitality industry include waiters, kitchenhands and bar attendants. These occupations are all regarded as having good to very good career prospects or are in other words still undergoing significant growth and are in shortage.

Occupation	% in Accommodation, Cafes and Restaurants	Number Employed
Waiters	89.90%	102,400
Kitchenhands	40.70%	95,200
Bar Attendants	88.60%	55,800
Chefs	82%	55,400
Restaurant & Catering Managers	70.20%	50,800
Cooks	63%	33,800
Hotel and Motel Managers	97%	22,900

Table 1 – Occupation Distribution, Key Occupations, Accommodation Cafes and Restaurants⁷

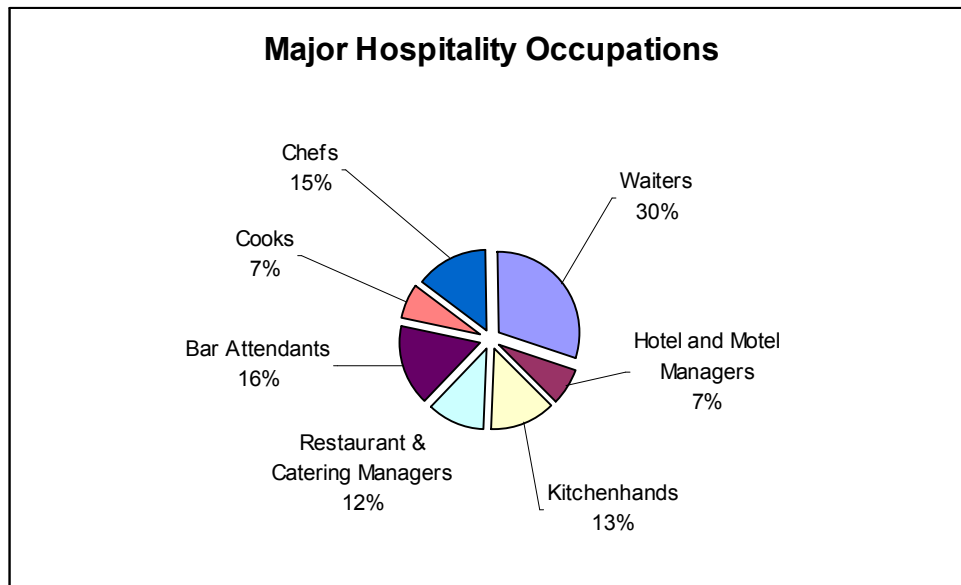


Figure 8a – Proportion of Employment in Major Hospitality Occupations

⁷ DEWR Job Outlook On-Line, August 2006

Projections for the Restaurant and Catering Industry

Revenues

In 2006, Restaurant & Catering Australia in conjunction with the Australian Hotels Association commissioned Econtech to provide economic analysis to assist in its submission to the Australian Fare Pay Commission.

This report examines economy-wide performance and relates that performance to the hospitality industry. In economy-wide terms the report notes that 'Australia's terms of trade has received a significant boost from the mineral price boom as demand for raw materials for production has surged as world economic growth has continued to expand. As the terms of trade has risen strongly so too has the Australian dollar which appreciated significantly through the early part of the decade and remains at historically high levels.' The report refers to the following graph to demonstrate that relationship:

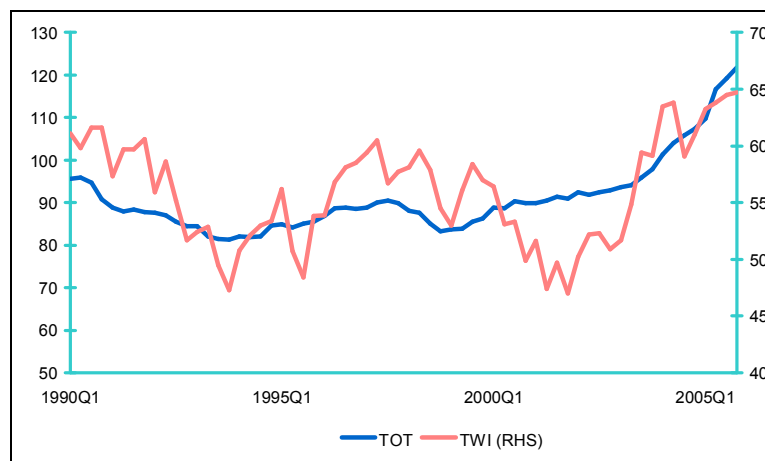


Figure 9 - Terms of Trade and Australian Dollar (TWI)

The Econtech Report goes on to observe that in the year to March 2006, output in the Accommodation, Cafes and Restaurants industry sector fell 2.2 per cent. The report explains that this decline has been caused by soft international tourism and declining domestic tourism due to growth in outbound movements (ie. Australians travelling off-shore). Figure 10 below demonstrates this trend.

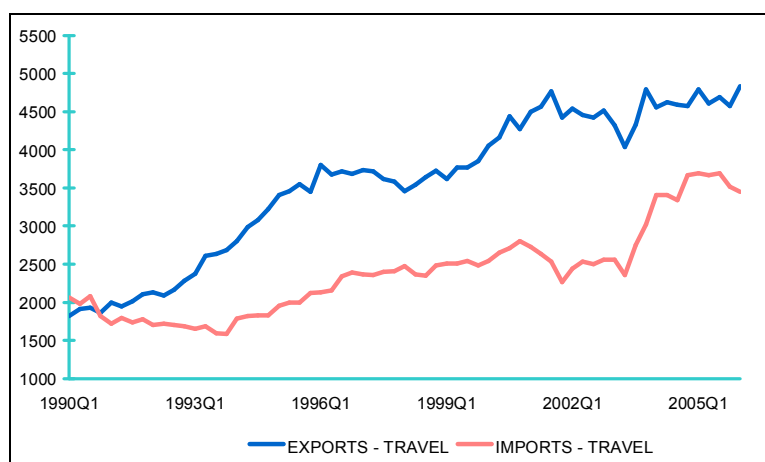


Figure 10 - Exports and Imports of Travel Services (\$million)

The report forecasts a continuation of these factors. It states that '*Growth in output and employment is expected to continue to significantly under-perform the rest of the economy*'.

The Econtech report demonstrates very clearly that the forward projections for the industry are to continue to under-perform against the rest of the economy. The report suggests that the strength in the Australian dollar, brought about by the boom in some sectors of the economy, has a negative effect on revenues in the hospitality sector with outbound tourism increasing, inbound tourism decreasing and spending by Australians on eating out slowing due to increases in petrol prices and interest rates.

Figure 11 below demonstrates the projected output growth for the hospitality industry.

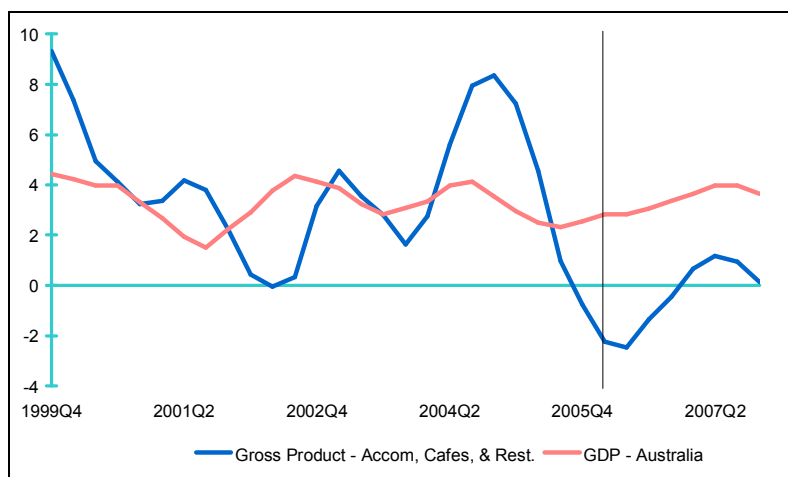


Figure 11 - Output Growth: National and Hospitality Industry (Annual Average Percent)

The Econtech Report paints a bleak picture of revenues in the hospitality industry, however suggests that the positive impacts of the 2006 income tax cuts will positively impact on the retail sector. The report also suggests that 'good producing industries' will fair well in the next three years on the back of retail growth and export opportunities.

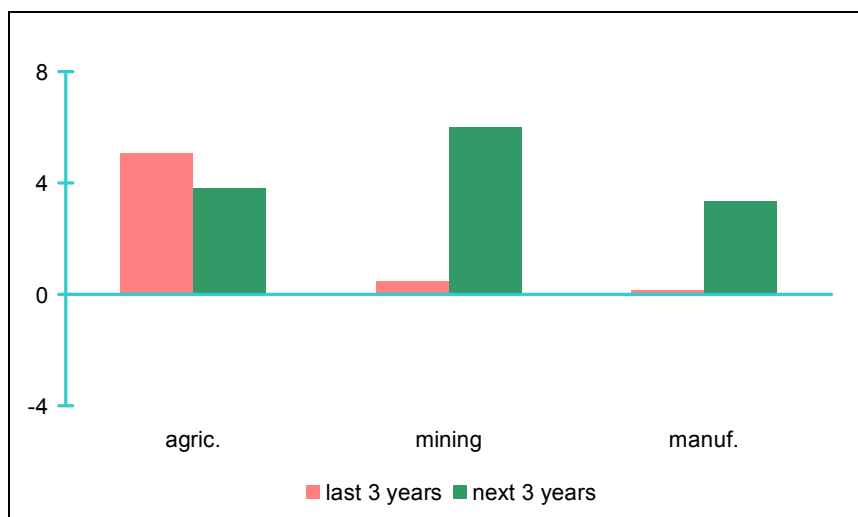


Figure 12 - Goods Producing Industry Output

Costs

The Econtech Report (cited above) also investigated the impact of wages growth in the restaurant and catering industry. The industry is very labour intensive (as are a number of other service industries). The restaurant and catering industry is, according to a report by the Department of Employment and Workplace Relations, impacted more than any other by increases in the minimum wage⁸. Employees in the accommodation, café and restaurant industry are three times as likely to be award only employees as those in other industries (60.2% versus 19.9%)⁹. This phenomenon is made significantly worse by the fact that 25% of the industry is left in the State industrial relations systems that is raising wage rates unilaterally.

On wage increases, the report says 'The degree of these labour cost increases will vary from industry-to-industry depending on the different proportion of individuals affected by the minimum wage increase and the assumed flow-on effects of these increases. For example, there will be larger average wage rate increases in the Accommodation, Cafes and Restaurants and Retail Trade industries relative to the Mining industry.'

This differential effect is summarized by figure 13 below:

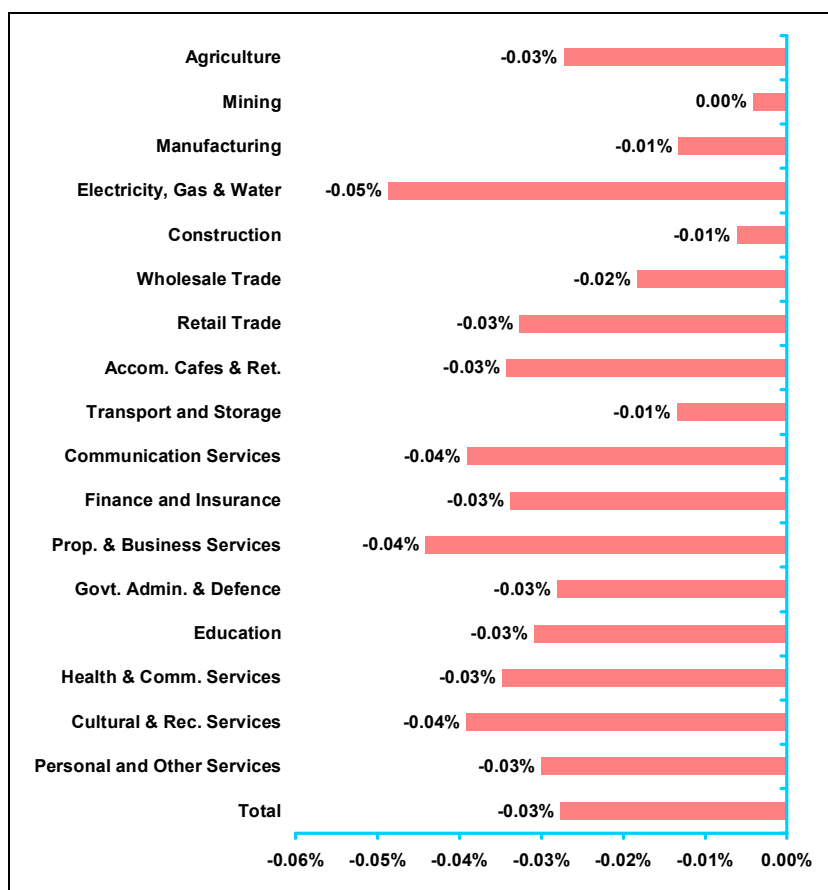


Figure 13 - Industry Employment Effects from Increasing the Federal Minimum Wage (deviations from the Baseline Scenario)

⁸ Minimum Wages in Australia, DEWR, 2994

⁹ Employee Earnings and Hours, ABS 6305.0.55.01, May 2004

Labour costs are not the only input costs to restaurant and catering businesses to have had significant increases. The cost of food has also increased significantly over recent years. An analysis of movements in CPI shows very clearly the detrimental effect of pricing movements on restaurants. In the CPI for the June Quarter 2006, the movement in the overall price of food over the past twelve months has been an increase of 8.3% in contrast the price of restaurant meals (a line item of its own in the CPI) has increased in the same period by 3.5%.

The cost of goods (food and beverages) and labour are together 72.9% of a restaurants input costs.

In the Cafes and Restaurants Australia report referred to above, the major cost areas and income are recorded for the two survey periods, 1998-99 and 2003-04. This survey, completed every five years, cites average annual percentage change in each of the cost areas.

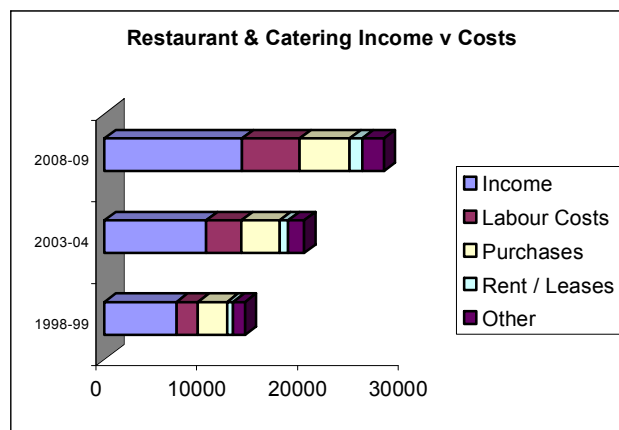


Figure 14 – Comparison of Costs and Projected 2008-09 costs.

Forecasting cost growth based solely on the average annual increase over the past five years, using the projected growth decline in the Econtech Report (a decline in growth of 0.3% per annum), restaurant profitability will fall to -2.8% by the next reporting period.

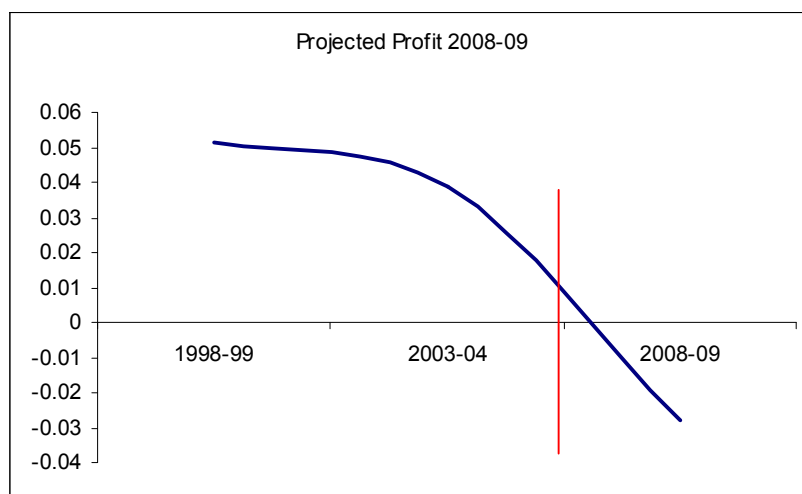


Figure 15 – Projected Restaurant Profits (2008-09)

Employment

Despite reduced growth, one of the key drivers of industry demand for skills is employment growth. The DEWR Job Outlook (June 2004) has identified the hospitality industry as the third strongest industry for projected employment growth to 2011-12 at 2.2% per annum. Projections conclude that food, hospitality and tourism will provide 8% of new jobs to 2011-12.

As a result it is anticipated that around 65,000 new jobs will be created over the next five years¹⁰. The DEWR Job Outlook (June 2004) indicates good prospects exist for hospitality occupations across the skill spectrum, including receptionists, chefs, and cooks (including fast food cooks), restaurant and catering managers, bakers and pastry cooks, waiters and bar attendants.

Despite strong job growth projections, the hospitality industry also has the highest rate of job turnover per annum at approximately 24%. High staff turnover produces many 'costs', including those associated with recruitment, any firm-specific training and the need for new employees to familiarize themselves with their new occupation and/or workplace. These costs are particularly hard hitting for small to medium tourism/hospitality enterprises, which account for the majority of businesses in the hospitality industry.

While low skilled jobs traditionally have had the highest rates of staff turnover, reflecting individuals moving along the career path from lower skilled to higher skilled jobs, in the hospitality industry the change in occupation is often unrelated to the area of work. The industry is often used to provide a casual income for students, who then go on to other careers on completion of their study.

It is evident that the predictions of future growth as well as the economic potential of the industry could be jeopardized by the current national skills shortage. In the past the shortage has been most evident for chefs, cooks and pastry cooks but, it is becoming increasingly obvious, it is much more far reaching. As a result, one of the immediate challenges for the industry will be addressing the need for skilled staff in Australia in order to realise the full economic potential of the industry.

¹⁰ Fact Sheet Accommodation, Cafes and Restaurants Industry – Australian Government, Department of Employment and Workplace Relations

The Inquiry

Restaurant & Catering Australia acknowledges the scope of the Inquiry into eligibility requirements and monitoring, enforcement and reporting arrangements for temporary business visas, with particular reference to the following:

- Inquire into the adequacy of the current eligibility requirements (including English language proficiency) and the effectiveness of monitoring, enforcement and reporting arrangements for temporary business visas, particularly Temporary Business (Long Stay) 457 visas and Labour Agreements; and;
- Identify areas where procedures can be improved.

According to the Department of Immigration and Citizenship, the purpose of temporary skilled migration to Australia is 'For lawfully operating Australian and overseas employers to employ approved skilled workers for temporary vacancies in particular occupations required in Australia. Temporary visas can offer a pathway to a permanent visa¹¹.'

The 457 Visa specifically is referred to as a 'program for employers to sponsor approved skilled workers to work in Australia on a temporary visa. Employers can nominate a number of positions for different occupations under the same sponsorship application¹²'.

Restaurant & Catering Australia has in recent years been involved in promoting and facilitating the use of migration programs as a solution to the skills and labour shortage the industry faces. Prior to the last two years the Association was reticent to provide advice to its members for fear of breaching Section 280 of the Migration Act 1958 [Cth] which requires that 'a person who is not a registered migration agent must not give immigration assistance'.

Through discussions with the then Department of Immigration and Multicultural and Indigenous Affairs (DIMIA), whilst the Association did not fall into the exempt categories from s 280, it was made clear that the provision of advice to businesses did not constitute a breach.

To assist its members (State Restaurant & Catering Associations) in providing advice to individual restaurateurs and caterers, R&CA has now:

- (a) signed a Labour Agreement with DEWR and then DIMIA to import 300 Cooks and Chefs into Australia;
- (b) undertaken an extensive promotion of this opportunity and other immigration options;
- (c) hosted an officer from the Department of Immigration and Citizenship to support business migration programs;
- (d) conducted a number (57) of information sessions on immigration compliance;
- (e) through the IOO there have been 285 contacts with individual businesses which have included reference to compliance issues;
- (f) participated in the Immigration Expo series in Australia, and;
- (g) engaged in the immigration policy debate with Government and Industry.

¹¹ DIAC Website, www.immi.gov.au, 29 January 2007

¹² *Ib Id*

Restaurant & Catering Australia recognises that migration programs have the capacity to significantly reduce skills shortage in the hospitality industry. Further it is understood that immigration is a useful adjunct to other strategies and the industry realises that it is not a stand-alone solution.

As noted above, the industry has used a range of migration programs and has experienced a number of frustrations with the systems that negatively impact on the supply of appropriately skilled staff for hospitality businesses.

Industry Outreach Officer Program (IOO)

The R&CA was not part of the original number of organisations announced as being involved in the IOO program (Minister Vanstone's Press Release of April 2005). Subsequent to the announcement the Association made representations and was successful in securing an IOO, on a half-time basis, at the end of October that year.

The R&CA is most grateful for this resource and commends the Government for this commitment to building the level of knowledge and understanding, within the business community, of immigration programs. In particular, this program has helped small operators, in the restaurant and catering sector, better understand the business migration program (457 and other Visa classes) and utilise the program in ways that benefit their business.

The Association believes that this program is a meaningful way to gather intelligence from the business community to improve administrative procedures, monitoring and enforcement of temporary business migration arrangements.

Sponsored Temporary Business Entry

457 Visas

The restaurant and catering industry (and other sectors of the hospitality industry) are strong users of temporary business migration (in particular the 457 Visa). In the 12 months to December 2006, 2058 cooks and chefs came to Australia as temporary residents (some 75% of which are likely to be working in hospitality).

Of these R&CA contends that the majority are employed by large businesses, whereas the industry is made up predominantly of very small businesses (averaging 8 staff). This imbalance is due predominantly to either a lack of understanding of engaging overseas workers as a recruitment option or the difficulty in becoming a nominating employer.

In meeting the challenge of understanding migration as an option, R&CA has worked hard to raise awareness through the Association magazine, email newsletters, employer seminars and the work of the Association IOO. As stated the Association believes that the continuation of these initiatives is vital for the continued effective and balanced operation of the temporary business migration program in the restaurant and catering industry.

In addressing the processes of becoming a sponsoring employer, it is important to reference the philosophy behind temporary skilled migration (as noted above) that is for '*lawfully operating Australian and overseas employers to employ approved skilled worker*'. In contrast to the basic premise of establishing whether a potential employer is acting '*lawfully*', the sponsorship agreement proposes three basic tests that are applied to vet nominating employers. These are tests of financial viability, industrial relations record and commitment to training.

R&CA contends that the latter of these three tests does little to determine 'lawful' business operations. Despite the laudable objective behind this commitment (which may be achieved more effectively in other ways), the application of this requirement does little other than to apply significant additional process requirements on small business. In addition, the vetting process does little to actually determine a commitment to training as this is almost impossible to assess through any demonstrable criteria.

Restaurant & Catering Australia believes that the commitment to training, in an industry such as hospitality, should be measured on an industry wide basis as the application of such a test to individual small employers imposes significant additional administrative load and does not contribute to the objectives of the migration program.

In contrast to the very detailed requirements on potential sponsor employers to demonstrate their commitment to training, there is no requirement for employers to detail their satisfactory industrial relations record. R&CA contends that some declaration and checking of the businesses workplace relations record does contribute the determination of 'lawful' business operations and therefore should be the focus of vetting of sponsoring / nominating employers.

As is the case with the 'commitment to training test', the financial viability test does little to assess financial viability. Whilst it is understood that a measure of protection is required to ensure that overseas workers will not be left in Australia without an income, the current financial viability test seems not to achieve this objective (if indeed providing this safety net is the objective).

Minimum Salary Level

The Minimum Salary Level (MSL) gazetted by the Minister for Immigration and Citizenship (currently \$41,850) is significantly higher than the award rate of pay for positions that qualify for migration under the business migration program. In addition, the increase in the salary level in the last 12 months was significantly higher than for commensurate Australian rates. In 2006 the Australian Fair Pay Commission granted an increase of \$22.04 per week for rates of \$700.00 per week and above. In the same period the Minister for Immigration increased the MSL for skilled migrants by \$80.48 per week.

In addition to the very significant increase (over and above that required for Australians), the Minimum Salary level moved from total annual salary to remuneration for a 38 hour week across the year. In an industry in which some 80% of employees work over 38 hours as a rule, this has a significant impact on the utility of temporary skilled migration for restaurateurs and caterers.

At the end of 2005 Restaurant & Catering Australia made representations that the then MSL of \$37,665.00 was too high to facilitate immigration, particularly for cooks. The result was an interpretation of the terms of the labour agreement that enabled the application of a rate of \$35,000 to apply to cooks and chefs under the labour agreement.

Restaurant & Catering Australia Labour Agreement

In July 2005, Restaurant & Catering Australia signed a labour agreement with the then DIMIA and DEWR to bring in cooks and chefs for restaurant and catering businesses. The purpose of the agreement was to streamline the process of engaging an overseas worker, for small restaurant and catering businesses, and alleviate the need for such businesses to demonstrate that there was a demand in the occupational area of cooks and chefs.

The labour agreement took some 18 months to negotiate. The negotiation stalled over a lack of clarity in the agreement over the employer's obligation in respect of repatriation and health care costs.

It was the Association's intention to enable restaurateurs and caterers to access the agreement without having to demonstrate a 'commitment to training' in the flawed manner noted above. Based on the very significant amount of work being undertaken by the Association, through the Restaurant and Catering Industry Action Agenda, to promote vocational training and education, R&CA was confident that the unwritten objective of training Australian workers would be met.

In the period noted above (2006) where 2058 cooks and chefs entered Australia on a 457 Visa, 12 457 visas (of the 300 targeted) were granted through the restaurant and catering labour agreement.

Despite significant promotion of the Labour Agreement and the support service available through the R&CA, the labour agreement has not been utilised. It is suggested that the following have contributed to the lack of take-up of the labour agreement:

- The list of employers proposed by the Association, for inclusion in Attachment A to the Labour Agreement, Employers Eligible to Nominate under the Labour Agreement with Restaurant & Catering Australia (over 600 employers) was rejected by DIMA;
- The process provided for individual employers to be included as an employer 'eligible to nominate' (Attachment B to the Labour Agreement outlined in the Attachment 1 to this submission), was tightened and a focus placed on information not previously required (in relation to financial viability);
- In 2006, during the prescribed annual review process, a revised Attachment B (Attached as Attachment 2 to this submission) to the agreement was proposed that imposed even further restrictions and administrative burden on the individual businesses applying to become party to the labour agreement¹³;
- In 2006 the increased MSL was applied to the R&CA Labour Agreement in so doing applying a 19.5%¹⁴ increase to the minimum salary level of a cook / chef being brought in under the agreement.

As a result of having negotiated the labour agreement, the Association promoted its availability (and simplicity of operation) to restaurateurs and caterers as a service provided by Restaurant & Catering Australia and its member associations.

Following discussions around the annual review of the Labour Agreement (and the rejected revised Attachment B), the Association requested clarification of the status of the Labour Agreement. In the interim the R&CA advised DIMA that it would discontinue promoting the agreement and instead advise individual businesses to pursue the standard sponsorship path. As a matter of internal policy, the Association undertook to pay the Standard Business Sponsorship fee of \$270 as this was not required under the labour agreement.

The administration of the R&CA Labour Agreement has been highly inconsistent, mainly in the assessment of nominating employers. Of the three basic tests, the 'commitment to training' requirement is the most inconsistently assessed. In the dealings the Association has had with the 457 Visa application process outside the labour agreement,

¹³ This revised Attachment B was rejected by R&CA.

¹⁴ The increase is closer to 25% due to the gazettal being restricted to 38 hours

this inconsistency seems to apply only to the Labour Agreement with the general application proceeding much more consistently than through the agreement. By way of example of this contrast an employer that was one of the Prime Minister's Employers of the Year was rejected on the basis of their record of training despite spending \$2.4 Million on training and having received an R&CA training award. The same employer, using the Standard Business Sponsorship process, was approved for a significant number of overseas workers.

This inconsistency presents great difficulty in providing advice to small businesses as to what is expected of them in making application. It also raises some serious questions about the purpose of Labour Agreements. If the operation of a labour agreement imposes the same if not more onerous requirements on employers, why would they use such agreements?

Through the life of the R&CA Labour Agreement the R&CA valued a number of aspects of the agreement including, a lower minimum salary level, the flexibility to have employees cover repatriation and health care costs should they wish to do so, a streamlined nomination process for employers (even though the employer was ultimately responsible for the payment of these costs should the Commonwealth be at risk of footing the bill) and the recognition of an industry-wide contribution (and commitment) to training as meeting the apparent moral obligation to demonstrate that Australian workers are being trained.

Once these benefits had been eroded over time, and rather than a benefit the agreement conditions had become more onerous than those for the Standard Business Sponsorship scheme, the Labour Agreement became redundant.

As part of the review of the R&CA Labour Agreement, the Association has attempted to add front of house occupations (such as trade waiter, restaurant supervisor and restaurant manager) to the agreement. Whilst under the current MSL these positions may be impossible to fill at a \$41,850 for 38 hour salary level, there may be some operators wishing to engage staff at this level. This has to date been rejected by the other parties to the agreement.

Given the R&CA experience with the 457 Visa and a Labour Agreement, the Association recommends the following changes be made to arrangements under the skilled business entry to Australia:

- Skilled Front of House (Hospitality) Occupations should be added to the Migration Occupation in demand listing.
- Perth should be classified as a region for immigration purposes.
- Labour Agreements should be open to be negotiated around standard conditions providing the agreement meets the objectives of temporary skilled migration to Australia is *'For lawfully operating Australian and overseas employers to employ approved skilled workers for temporary vacancies in particular occupations required in Australia. Temporary visas can offer a pathway to a permanent visa'¹⁵.*
- The Minimum Salary Level should recognize the range of occupations in the 'particular occupations' required in Australia and should be reviewed in a manner consistent with other minimum wages in Australia.
- The way in which the MSL is referred to and enforced should be consistent with Workplace Relations arrangements.

¹⁵ DIAC Website, www.immi.gov.au, 29 January 2007

- The assessment of nominating employers should be consistent with the objectives of the skilled migration program in determining a business operating 'lawfully'. As such, under the current guidelines:
 - The process of justifying the skill shortage and justifying an adequate record of commitment to training and education, for immigration purposes, should be made easier through streamlining at an industry wide basis¹⁶.
 - The assessment of financial viability should be open to review and assessment as to whether this is what is best assessed to achieve the objectives of the test.
 - The assessment of industrial relations record should be made transparent and be tightened along the lines of 'should not have been subject to a breach of the Workplace Relations Act 1996 as determined by the Office of Workplace Services'.

Permanent Residence – General Skilled Migration and the Employer Nomination Scheme

The basis for a number of processes in General Skilled Migration is the Skilled Occupations List. There seem to be several inconsistencies in the occupations in the Skilled Occupations list. These inconsistencies have the effect of stopping applicants for General Skilled Migration from coming to or staying Australia. In particular this is a concern when the affected individuals hold skills and are capable to executing skills that are in demand in Australia (ie. students that have completed a diploma or degree program in hospitality management).

There appears to be three specific ways in which this might be addressed:

1. Restaurant Managers should be added to the Skilled Occupations List (and attract 60 points just as Chefs do);
2. Degree Qualifications for Hospitality Managers should be moved to the 'Professionals Listing' and attract 60 points (as other practical vocationally based degree programs do);
3. The points allocated to 'Work Experience' should be expanded to include students who have undertaken a significant Work Component (say 6 months or 1 Year) as part of the course of study¹⁷ (this is standard practice in many cadetship style programs).

Restaurant & Catering Australia questions whether the General Skilled Migration program is achieving the overall objective set for the skilled migration program '*For lawfully operating Australian and overseas employers to employ approved skilled workers for temporary vacancies in particular occupations required in Australia. Temporary visas can offer a pathway to a permanent visa*¹⁸.

In many cases it is understood that individuals gain entry to Australia through the skilled migration program, in an occupation in demand, and do not work in that occupational area once in Australia. This is understood to happen with cooks as one example.

¹⁶ Achieved through the signing of a Labour Agreement ONLY FOR COOKS / CHEFS.

¹⁷ The Work Experience criteria currently allow 5 or 10 points for '3 – 4 years work in any occupation on the Skilled Occupations. Given there is no specification of casual or part-time work, a student working part-time during their course and full-time during placement periods could meet this requirement.

¹⁸ DIAC Website, www.immi.gov.au, 29 January 2007

This scenario clearly does not meet the objective of employers employing overseas workers in skilled occupations. The objectives of the scheme may best be met by an expansion of the Employer Nomination Scheme at the expense of the General Skilled Migration program.

The Future of Temporary Business Migration

Restaurant & Catering Australia has severe concerns that even in the event that all of the recommendations above were implemented, the underlying shortage of labour would still not be met.

The reality is that with the current rate of unemployment those seriously looking for work are very limited in number and in many cases they are not looking for work at the level of skill of many hospitality occupations. Increasingly newcomers to the workforce believe that hospitality work is beneath their aspirations. Whilst some change can be effected (and should be effected) by promoting careers within the industry, there will be unskilled job roles that will go unfilled.

Restaurant & Catering Australia believes that, if the level of service provided by the industry is to continue, a new source of unskilled labour needs to be found. It is suggested that the need for unskilled labour should be regarded as inevitable and some work done to pilot approaches in perhaps a geographically or occupationally bounded way. It appears that there is some opportunity presented by the eagerness of some of the countries in the South Pacific to send labour to Australia.

Attachment B

State Association Member businesses who wish to employ overseas chefs/cooks under the Labour Agreement which Restaurant & Catering Australia (R&CA) has negotiated with the Department of Immigration and Multicultural Affairs (DIMIA) are required as a first step to complete this form ("Attachment B").

After completion this form should be returned (address details are given at the foot of the form) so that assessment/comment can be made by the Department of Employment and Workplace Relations [DEWR].

Contact Person Name and Position: _____
Registered Company Name: _____
ABN: _____ Metropolitan or Non Metropolitan: (Please circle)
Phone: _____ Fax: _____
Email: _____

Number of Personnel currently employed by the employer by residency status. Show also the employment status (eg. full-time or casual).

Australian Citizens and permanent residents (Chefs & Trade Qualified Cooks): _____

Australian Citizens and permanent residents (Other Employees): _____

Expatriated (Non-Sponsored Workers): _____

Number of recent (less than 12 months experience) graduates and new apprentices currently employed

Recent Australian Graduates: _____

New Apprentices _____

Informal Trainees _____

Estimated Number of Australian Graduated and New Apprentices to be recruited in the next 12 months

Recent Australian Graduates _____

New Apprentices _____

Informal Trainees _____

Annual Expenditure on training in dollar terms and as a percentage of gross wages expenditure. (It is helpful if the member attaches supporting financial data such as financial statements/copy of BAS return/letter from accountant etc)

Training Expenditure: _____

Expenditure as a % of gross wages expenditure: _____

Information on other training initiatives implemented by the Member (which may assist DEWR in the assessment of an employer's training record) can be attached to this form.

Employer undertaking and commitments under the temporary and permanent Labour Agreement

Overseas employees are covered under the same industrial legislation as applies to Australian workers. It is a requirement that the sponsoring employer protect the Australian taxpayer from health, return travel or compliance costs by undertaking to:

1. Ensure that the costs of the sponsored person's return travel are met;
2. Pay medical or hospital expenses (for example by making suitable health insurance arrangements);
3. Reimburse the Commonwealth for costs incurred in location, detention, removal and for processing protection claims of their nominee and their dependants to a maximum of \$10,000. Liability in the regard ceases when:
 - a) The nominee leaves Australia; or
 - b) Obtains another visa while in Australia
 - c) 28 days after the employer notifies DIMIA that employment has ceased.
4. Employers must also advise DIMIA if a change in circumstances affects the employer's capacity to honour its obligations under this Agreement; and
5. Note that it is a condition of an employee's temporary visa that they must continue to be employed by their sponsor in the position or occupation for which they have been nominated, and cannot work for another person or themselves while working for their sponsor. If a visa holder wishes to change employer, a new visa application is required, together with an approved sponsorship and nomination.
6. In the case of a long stay temporary business (subclass 457) nominations, employers will ensure that the salary to be paid (excluding any allowances such as superannuation, car allowances, accommodation, meals, shares and bonuses, and living-away-from-home allowances) is at least \$35,000.
7. If the employer terminates the employment of a temporary visa holder prior to the expiry of their visa, the employer must advise DIMA immediately.

After completion please fax this form to Restaurant and Catering at 1300 722 396
or email to Restaurant and Catering at immi@restaurantcater.asn.au
or mail to Restaurant and Catering at PO Box 121 Surry Hills NSW 2010

Print date: May 2006

ASSESSMENT OF “TRAINING RECORD” FOR THE PURPOSES OF THE RESTAURANT AND CATERING ASSOCIATION LABOUR AGREEMENT

Attachment B is to be completed by all members of the State Associations that form the membership of *Restaurant & Catering Australia* not included on Attachment A who are seeking to access the *Restaurant & Catering Australia* Temporary and Permanent Entry Labour Agreement.

Once completed **in full** this Form should be forwarded to the Director, Migration Policy and Analysis Section (DEWR) by fax to (02) 6276 7604 or by email to migration@dewr.gov.au. Please note:

- incomplete or partially completed Forms will not be accepted by DEWR for assessment;
- all Forms will be assessed within 10 days of receipt; and
- information on other training initiatives implemented by the employer for Australians can be attached to this Form.

NAME AND ABN OF EMPLOYER:

Registered Company Name:

ABN:

Metropolitan OR Non-Metropolitan Location (and postcode):

CONTACT PERSON WITH EMPLOYER:

Name and Position:

Address:

Phone:

Fax:

NUMBER OF PERSONNEL CURRENTLY EMPLOYED BY THE EMPLOYER BY RESIDENCY STATUS

Australian citizens and permanent residents (Chefs and Trade Qualified Cooks):

Australian citizens and permanent residents (Other Employees):

Expatriates (Sponsored Workers):

Expatriates (Non-Sponsored Workers):

NUMBER OF RECENT (LESS THAN 12 MONTHS EXPERIENCE) GRADUATES, NEW APPRENTICES AND INFORMAL TRAINEES CURRENTLY EMPLOYED

Recent Australian Graduates:

Australian Apprentices:

Formal Trainees:

ESTIMATED NUMBER OF AUSTRALIAN GRADUATES, NEW APPRENTICES AND INFORMAL TRAINEES TO BE RECRUITED IN THE NEXT 12 MONTHS

Recent Australian Graduates:

Australian Apprentices:

Informal Trainees:

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ANNUAL EXPENDITURE ON TRAINING AUSTRALIANS IN DOLLAR TERMS IN THE LAST 12 MONTHS (OR FINANCIAL YEAR)

Training Expenditure: \$

Please attach invoices or financial statements to support this estimate

DETAILS OF CONSULTATIONS WITH JOB NETWORK MEMBERS ON THE RECRUITMENT OF AUSTRALIAN JOBSEEKERS WITHIN THE LAST 12 MONTHS

Name of Job Network Member (JNM) or other providers of Australian Government Employment Services (such as CRS Australia or the Disability Employment Network):

Contact Person:

Contact Phone:

Number of Australian Job Seekers placed with employer by Job Network etc:

Other Information on consultations with Job Network Member etc:

DETAILS OF CONSULTATIONS WITH THE INDUSTRY STRATEGIES TASKFORCE (DEWR)

Details of Consultations with the Industry Strategies Taskforce – this should include information on initial approaches, meetings, outcomes etc

DETAILS OF PARTICIPATION IN DEWR LABOUR MARKET PROGRAMMES (EG STEP) AND/OR STATE/TERRITORY GOVERNMENT LABOUR MARKET PROGRAMMES

Details of participation in DEWR Labour Market Programmes (eg STEP) and/or State/Territory Government Labour Market Programmes – this should include information on the number of job seekers placed etc.

NUMBER OF HUMANITARIAN JOB SEEKERS PROVIDED WITH EMPLOYMENT IN THE LAST 12 MONTHS

Number of Humanitarian job seekers provided with employment:

TITLE OF AWARD (OR OTHER WORKPLACE AGREEMENT) TO WHICH THE EMPLOYER IS A PARTY – IF APPROPRIATE

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EMPLOYER DECLARATION

I declare the information provided in this Form is correct and that, on request, I will provide the Department of Employment and Workplace Relations with supporting evidence (including financial statements, invoices, copies of Australian Apprenticeship registration papers, Job Network vacancy lodgements etc).

I agree that the Department of Employment and Workplace Relations can consult with other Commonwealth and State agencies to confirm the accuracy of the information provided in this Form.

I confirm that the company identified on this Form has not and will not, for operational reasons, retrench any Australian employed as a trade-qualified chef or cook in order to replace them with overseas workers or effect a reduction in the terms and conditions of employment of Australian workers as a result of employing overseas workers.

SIGNATURE OF DELEGATE/REPRESENTATIVE OF RESTAURANT AND CATERING MEMBER COMPLETING THIS FORM

Signature: **Date:**/...../20.....

COMMERCIAL-IN-CONFIDENCE

EXPLANATORY NOTES (PLEASE READ PRIOR TO COMPLETING ATTACHMENT B)

In completing Attachment B to the *Restaurant & Catering Australia* Labour Agreement, the members of the State Associations that form the membership of *Restaurant & Catering Australia* should note the following:

- “Australian” means an Australian citizen (whether born in Australia or elsewhere) or a non-citizen who, being usually resident in Australia, is the holder of a permanent visa granted by the Department of Immigration and Multicultural Affairs (DIMA);
- “Australian Apprentices” includes apprentices who have signed a training contract (under the Commonwealth’s Apprenticeship Scheme) which is registered with the relevant State or Territory Government authority. An employer seeking to establish a “commitment to training” should provide copies of correspondence with a State Department of Education and Training and/or group training organisations relating to their future participation in apprenticeships:
 - Australian Apprenticeships is the new name for a scheme formerly known as New Apprenticeships;
 - Australian Apprenticeships encompass all formal apprenticeships and traineeships. They combine time at work with training and can be full-time, part-time or school-based;
 - lead to a nationally recognised qualification; and
 - if there is a high level of turnover, then supplementary data should be provided on the number of formal apprentices and informal trainees recruited, number completing apprenticeship or traineeship who remain employed, number completing apprenticeship or traineeship who left the employment and number who did not complete the apprenticeship / traineeship.
- “DEWR” is the Commonwealth Department of Employment and Workplace Relations;
- “expatriates” includes all overseas persons resident in Australia on a temporary visa with a work right – this may include temporary business entrants (subclass 457), occupational trainees (subclass 442), working holiday makers (subclass 417), overseas students, spouse/de facto visa holders, New Zealand citizens and permanent residents, etc;
- “gross wages expenditure” means total expenditure on all (full-time, part-time and casual) employees (PAYE) wages, plus relevant superannuation and payroll taxes – it does not include directors’ fees; and
- “Industry Strategies Task Force” is an organisational unit within DEWR plays a facilitative role with industry, alerting them to the suite of employment services that are available and working with them and employment service providers to develop innovative solutions to recruitment needs in practical, local ways. The Department has targeted seven industry sectors including: property and business services; health and community services; retail trade; construction; accommodation, cafes and **restaurants**; mining and manufacturing;
- “Job Network” is a national network of private and community organisations which, under contract to DEWR, provide assistance to Australian job seekers based on issues such as personal circumstances, barriers to employment, level of disadvantage, duration of unemployment and available job opportunities;
- “recent Australian graduates” includes Australians who completed higher education (university) courses in the last 12 months;
- “STEP” is the Structured Training and Employment Programme administered by DEWR. STEP provides flexible funding for projects that lead to lasting employment for Indigenous job seekers. Assistance is tailored to business needs and could, for example, include funding for apprenticeships, mentoring and other innovative approaches;
- “training expenditure” means expenditure by the employer on formal (accredited) training such as conferences, seminars, courses (including occupational health and safety, first aid, fire emergency, responsible training of alcohol, scholarships, etc. Training expenditure does not include the salaries of employees participating in training or funding provided by other persons or organisations for training purposes – that is, the salary of trainees should NOT be included.

ADDITIONAL INFORMATION ON “OTHER” TRAINING OR RELATED ACTIVITIES IMPLEMENTED FOR AUSTRALIAN EMPLOYEES SHOULD BE ATTACHED TO THIS FORM