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Restaurant & Catering Australia

Restaurant & Catering Australia 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 5,800.

The Restaurant Industry in 2004

The Australian Bureau of Statistics reports some 28,900 restaurant, café and catering businesses that are registered for GST. Of these businesses 57% turn over between \$100,000 and \$499,000 and 94% turnover under \$500,000. There are eight businesses that turn in excess of \$20 Million¹ (see Figure 2).

The year 2004 was certainly a year of contrast for the restaurant industry. According to the ABS the industry went from the nine months of high turnover to three months (October through December) where turnover dropped below 2003 levels².

Strong turnover in October-November 2003 (due to the Rugby World Cup) contributed to artificially high revenues at that time. It is therefore not surprising that 2004 levels dipped below 2003. December 2004 was, however, lower than 2003, without this distortionary effect.

Despite the overall positive revenue growth, the large price increases in major inputs (food and labour) have further undermined profitability in this period. Profitability, for the predominant licensed restaurant category, was in 1998-99, cited by the ABS at 3.9%³. This is likely today to be 1.5% on turnover (before tax).

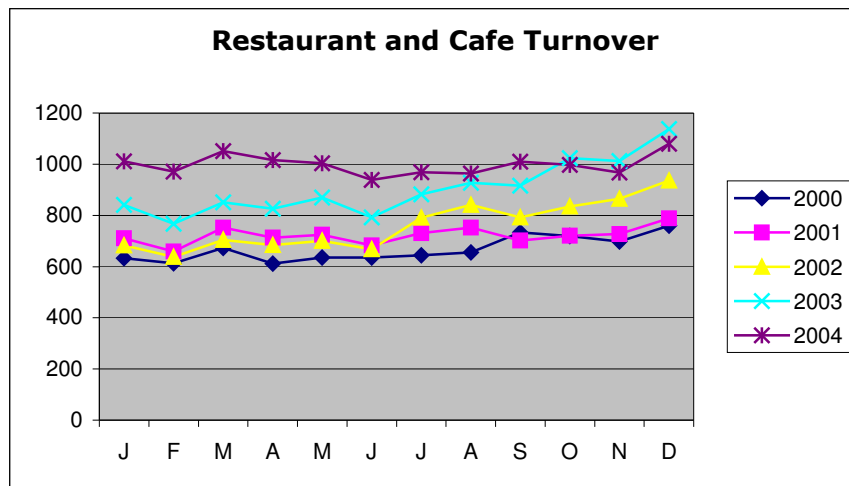


Figure 1- Restaurant Industry Turnover 2000 - 2004

¹ ABS Business Counts, March 2002, Restaurant & Catering Australia

² Australian Bureau of Statistics, Retail Trade Data, December 2004

³ ABS Café and Restaurant Series, 1998-99

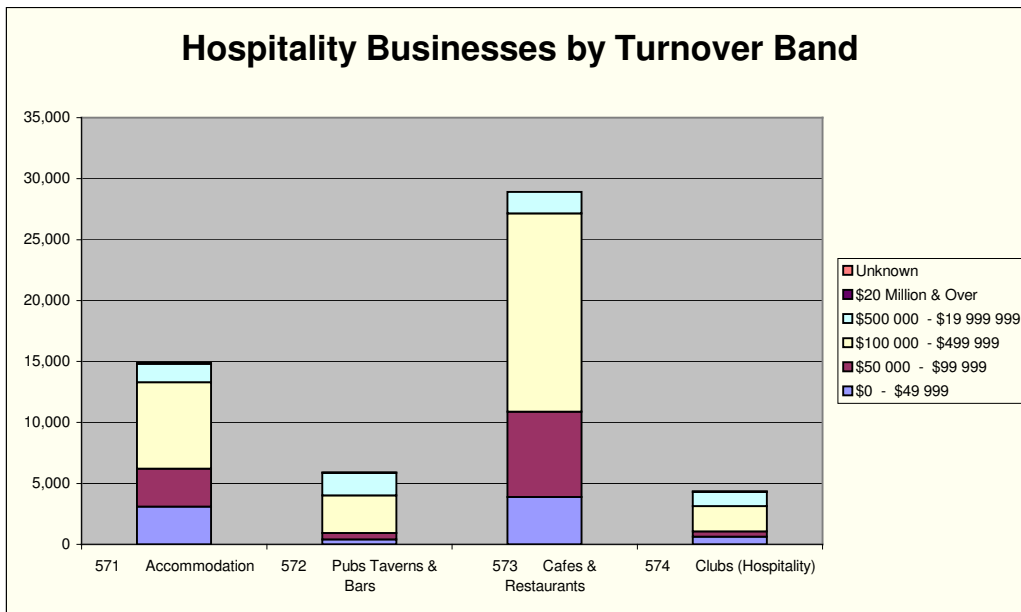


Figure 2 – Hospitality Businesses by Turnover Band, ABS Business Register

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.

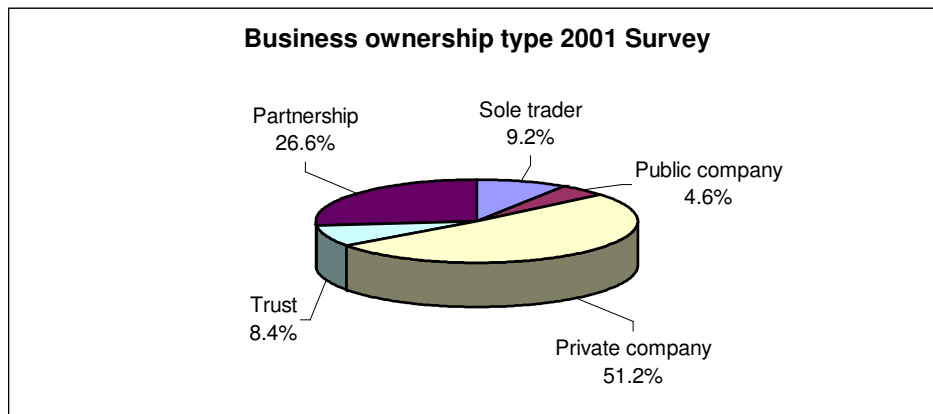


Figure 3 – Business Ownership Type, Restaurant & Catering Operations Report, 3rd Edition.

Restaurant Industry Employment

In the November quarter of 2003, 239,000 people were employed in restaurants and cafes in Australia. This represented an 8.1% increase on the number employed 12 months earlier (221,000). In this period the restaurant and café industry accounted for 2.5% of Australia's workforce and 4.7% of the part time workforce.

Casual workers now make up 53%⁴ of the restaurant industry. This is in contrast to the all industry average of approximately 26%. As a result there are more employees subject to loaded up rates than in other industries. The number of employees on penalty rates is compounded by the 'out of hours' nature of the work taken in conjunction with conditions such as in the Liquor And Accommodation Industry - Restaurants - Victoria - Award 1998, which requires the payment of a penalty for work undertaken outside 7.00am to 7.00pm.

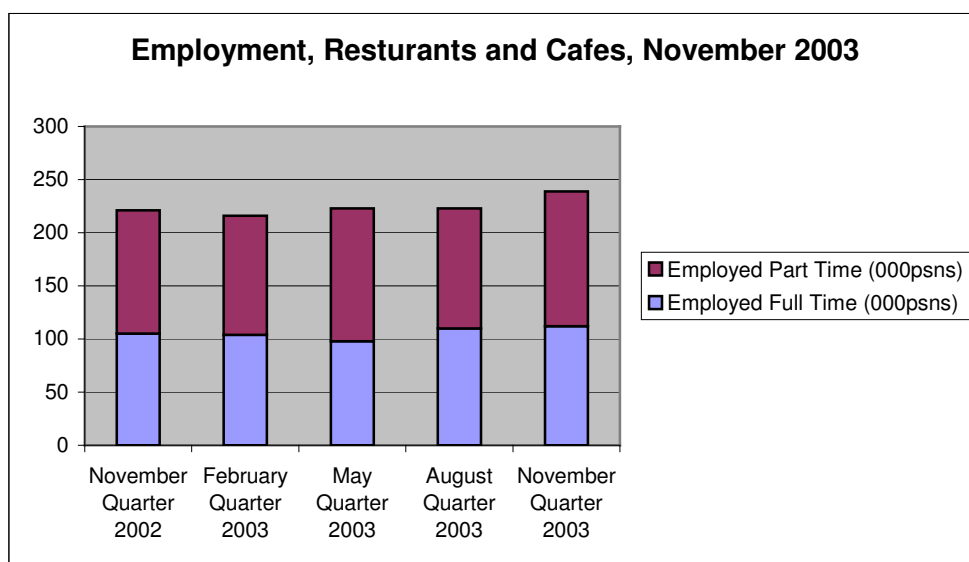


Figure 4 – Full Time and Part Time Employment, Accommodation, Cafes and Restaurants 2002 - 2003

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, cafes and catering workforce is part-time females.

⁴ ABS Employed Persons, Café and Restaurant Industry, Unpublished Data, August Quarter, 2001

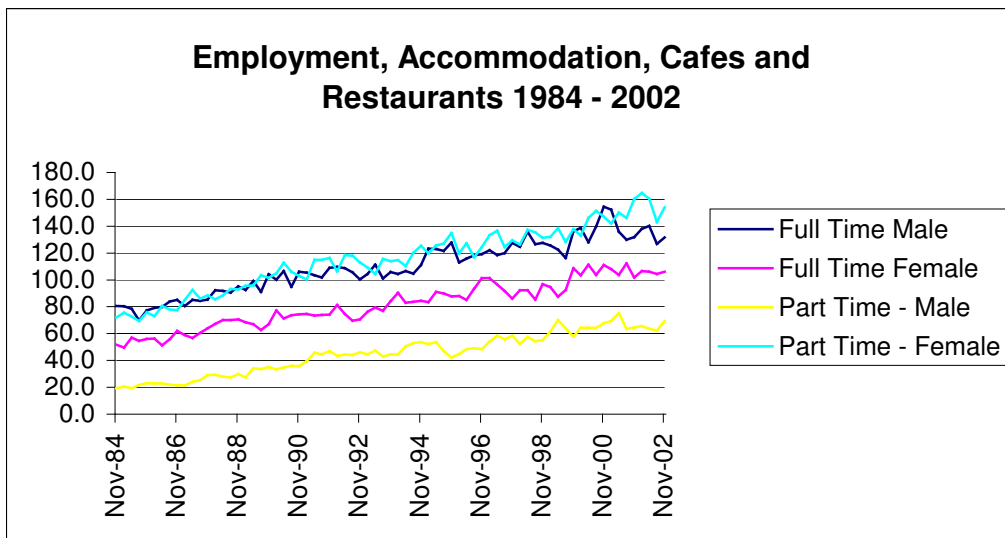


Figure 5 - Employment, Accommodation, Cafes and Restaurants 1984 - 2002

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)⁵.

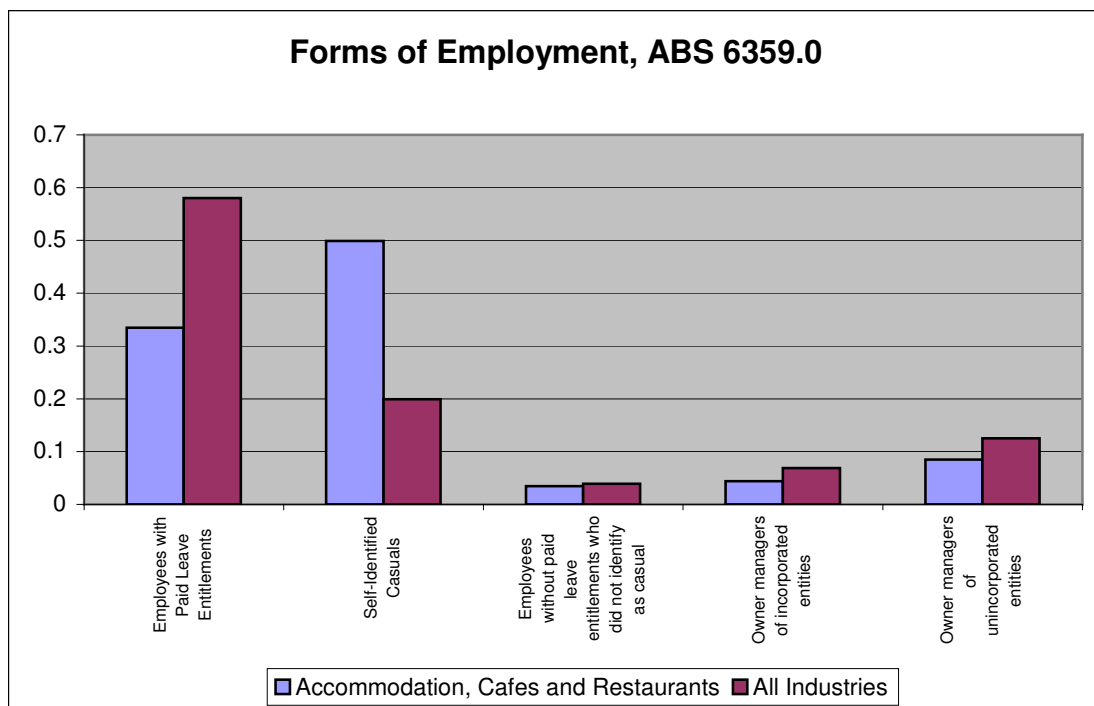


Figure 6 - Forms of Employment, ABS 2001

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%).

⁵ ABS Forms of Employment, November 2001, ABS 6359.0

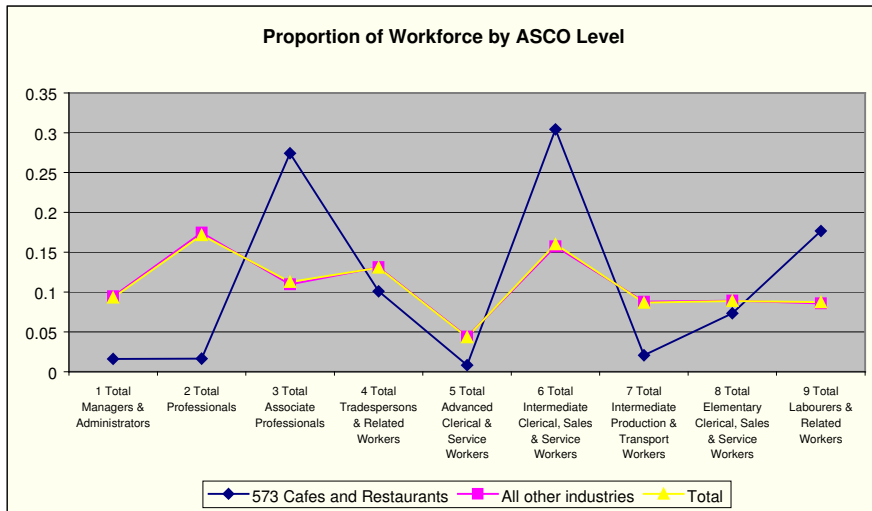


Figure 7 – Proportion of Workforce by ASCO level

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.

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%)⁶. Collective agreements have been under utilized in the industry and individual agreements have had a take-up equitable with other industries. Working operators are again recognised as a being under-represented in the hospitality labour market.

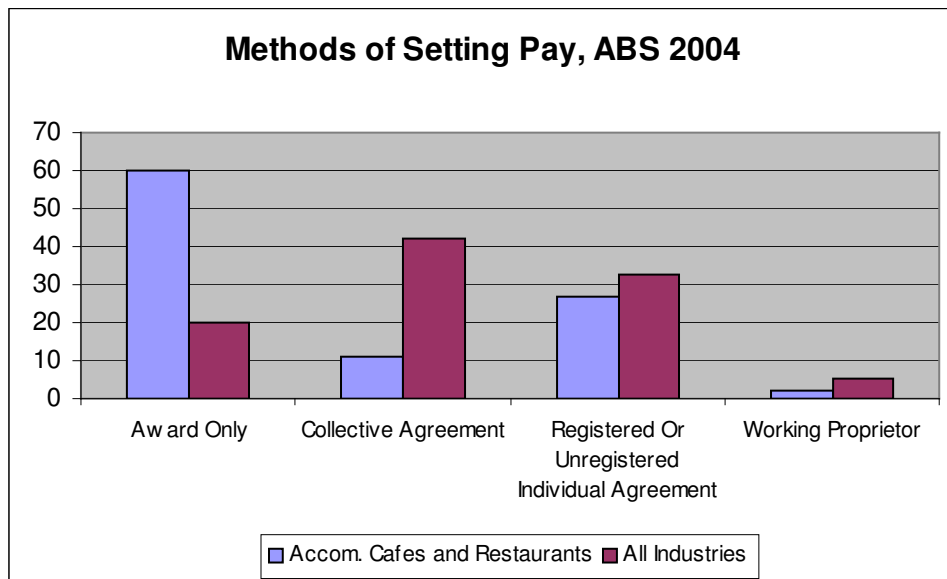


Figure 8 – Methods of Setting Pay, ABS Employee Earning and Hours, May 2004

⁶ Employee Earnings and Hours, ABS 6305.0.55.01, May 2004

Projections for the Restaurant and Café Industry

Accommodation, cafes and restaurants (of which cafes and restaurants are one sector) is projected to be the third fastest growth industry to 2010-2011⁷. The hospitality industry is projected to grow by 2.4% per annum between now and 2011. This growth will require an additional 12,700 employees per annum.

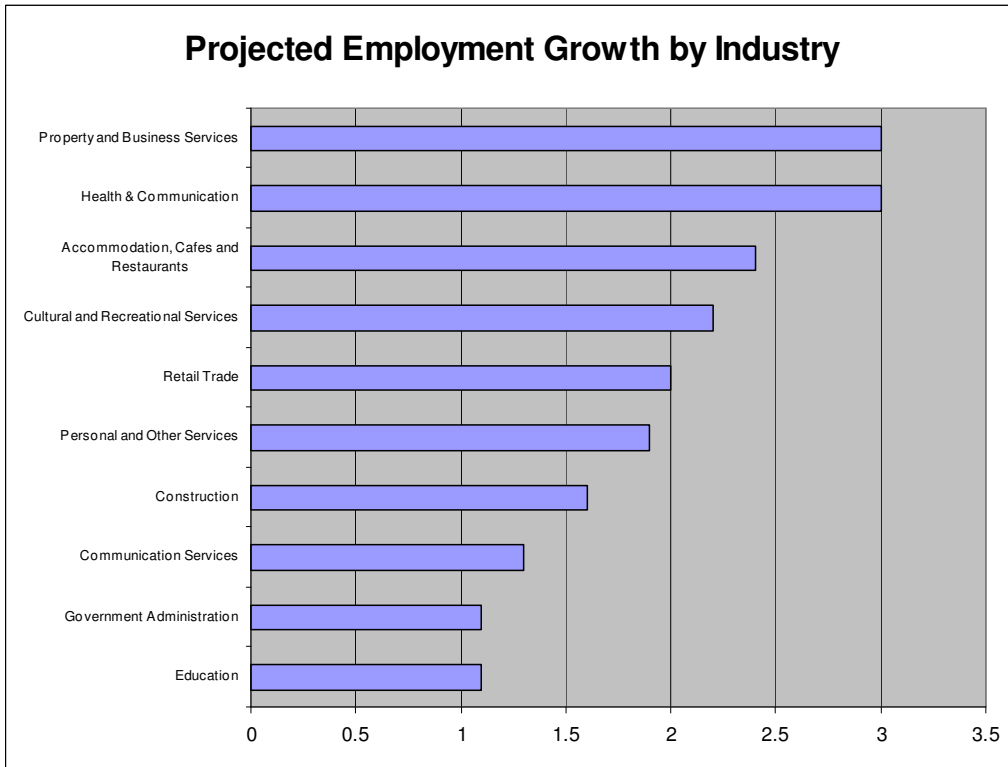


Figure 9 – Projected Employment Growth by Industry, DEWR, June 2004

⁷ DEWR Job Outlook, June 2004

The Inquiry

The Minister has asked the Committee to inquire into and report on:

- the status and range of independent contracting and labour hire arrangements;
- ways independent contracting can be pursued consistently across state and federal jurisdictions;
- the role of labour hire arrangements in the modern Australian economy; and
- strategies to ensure independent contract arrangements are legitimate.

The Overall Principle

Restaurant & Catering Australia agrees with the overall principle announced in the Committee Secretariat's letter of 21 January 2005, that flexibility in working arrangements is required to meet the demands of economic growth.

The analysis above demonstrates that the demands of economic growth will be very significant in the café and restaurant industry. The industry employment growth is estimated at 2.4% pre annum to 2011.

The Status of Contracting and Labour-Hire in the Café and Restaurant Industry

The prevalence of labour-hire arrangements in the restaurant and catering industry is increasing, but is less than other industries. The Victorian Government Inquiry into Labour Hire Employment⁸ cited Hospitality and Recreation Services as the third lowest percentage of workplaces using Labour Hire (at 17.5%).

This report found that Mining & Construction and Manufacturing were the heaviest users of Labour Hire arrangements at 61.5% and 30.6% respectively. Analysis of the data in this report and that contained in the ABS *Forms of Employment* report⁹ reveals an inverse relationship between the incidence of Labour-Hire usage and casual employment.

Despite the relatively low usage of Labour-Hire and extensive use of casual employment, the projected growth in the industry will most likely necessitate an increase in the short and medium term.

Deepening occupational skill shortages will require changing employment patterns, particularly in occupations that have not been dominated by casual employment. These include cooks, chefs and restaurant / catering managers.

These occupations (cooks, chefs and restaurant / catering managers) feature in the DEWR Job Outlook Report, and are projected to grow at 3.5% and 3.7% per annum respectively.

This potential for growth in labour-hire arrangements, in the hospitality industry, has been identified in reports into the changing nature of employment including,

⁸ Interim Report on the Inquiry into Labour Hire Employment in Victoria, Parliament of Victoria, December 2004

⁹ Forms of Employment, ABS 6359.0, November 2001

Scoping Secondary Labour Market Solutions¹⁰. This report connects, among other factors, the skills shortage, the role of Group Training arrangements and the incidence of labour-hire relationships.

The Job Network record 89% of their placements, for 2001-02, as Temporary/Contract Placements¹¹. In Hospitality, travel and tourism this equates to 348,900 placements (which is slightly lower than the average at 88.6%). This level of temporary / contracted labour is clearly out of step with the labour market (at 27%). It is likely that this is due to the types of employment arrangements that can be serviced by the Job Network.

The dynamic nature of hospitality has meant that a number of profile cases and incidences, in relation to labour-hire, have been in this industry (e.g. Bluesuits Pty Ltd v Graham (1999)). Whilst they have been predominantly in the larger enterprises of the Accommodation, Café and Restaurant industry, they show an application of contract and labour-hire arrangements in the sector.

The Role Of Labour Hire Arrangements In The Modern Australian Economy

The detail above demonstrates a clear expanded role for contracting and labour hire arrangements in the future restaurant and catering industry in Australia.

The substantial growth that the industry will experience in the next five to six years will require businesses to examine different ways to attract workers, if the need for labour is to be satisfied. In this quest for labour, businesses will seek certainty in their engagement of workers in both contractor and employment relationships.

The current mis-match between business and some workers expectations, may to a certain extent be addressed by labour-hire arrangements. Revenue patterns in restaurants and catering businesses are becoming increasingly seasonal. Peaks in trade (both throughout the year and each week) are becoming stronger and troughs in activity are becoming weaker. Traditional full time employment is therefore becoming less of a feature (as noted above). Individuals seeking full time engagement may therefore need to turn to multiple workplaces and have their needs satisfied through a intermediary (such as a labour-hire firm).

In addition to working across multiple worksites, the restaurant and catering industry will most likely seek other more creative ways of attracting workers into the future. As skills shortages worsen across higher level occupations (particularly Chefs and Restaurant Managers) enterprises struggle to remunerate workers in the inherently risk intense, competitive environment. The ownership structure (one third of businesses being sole-traders and partnerships) of many restaurant businesses excludes corporate type share ownership plans for workers. It is likely, therefore, that, given reliable contracting arrangements, that enterprises may look to profit distribution contracting arrangements to entice workers.

The role of independent contracting and labour-hire, in the restaurant and catering industry in the future, is to provide certainty to business, facilitate multiple workplace hiring and enable engagement, between worker and enterprise, that goes beyond the traditional master servant relationship.

¹⁰ Scoping Secondary Labour Market Solutions, Dusseldorp Skills Forum, 2003

¹¹ Employment Services Australia, ABS 8558.0, 2001-02

Ways Independent Contracting Can Be Pursued Consistently Across State And Federal Jurisdictions

It is beyond the scope of Restaurant & Catering Australia's expertise to provide advice to the inquiry on how to pursue reform to independent contracting arrangements across jurisdictions.

The Association would seek however, to urge consideration of approaches that include all enterprises and not just those that are corporations.

Strategies To Ensure Independent Contract Arrangements Are Legitimate.

Restaurant & Catering Australia believes that the overriding consideration, in reform of Independent contracting arrangements, is certainty. Businesses must be able to be confident that their obligations (particularly in relation to on-costs and vicarious liability) are clear.

The proposed legislation must be clear in its definition of the status of Independent Contractors. The vagaries of the court determined, so called control or multiple factor tests do not provide the comfort necessary for enterprises to engage contractors with confidence. The line between contractor and employee needs to be distinctive.

The level of prescription in the legislation should not undermine the necessary flexibility in the different types contracting and labour hire arrangements that it enshrines. The demands of the future labour market, in the restaurant and catering industry, will require many different responses, if the demand for work is to be met. It is suggested that the defining features of the independent contractor should be based on concrete factors (such as the furnishing of an Australian Business Number by both the contractor and the principle) rather than concepts such as the control that the principle has over the contractor and the use of personal property. These later factors are subject to interpretation and will not provide the certainty that is required into the future.