

TABLE OF CONTENTS

Restaurant & Catering Australia	2
The Restaurant Industry	2
Restaurant Industry Employment.....	4
Projections for the Restaurant and Café Industry	7
The Inquiry.....	8
1. A National System	8
2. Australian Fair Pay Commission	9
3. Australian Fair Pay and Conditions Standard	10
Hours of Work	10
Annual Leave.....	10
Personal / Carers Leave	11
4. Agreements	11
Usage of Agreements in the restaurant and catering industry	11
Implementation.....	12
The Way Forward	13

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 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 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.

Restaurant, cafe and catering turnover for the month of September 2005 was \$949.9 million. This was lower than turnover in the same month in 2004. September 2005 brings up eleven consecutive months with negative growth. In September 2005, compared to September 2004, the industry is 6.2% down in revenues across Australia, and at levels equivalent to 2003.

A report released by the Australian Bureau of Statistics² in July 2005 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.

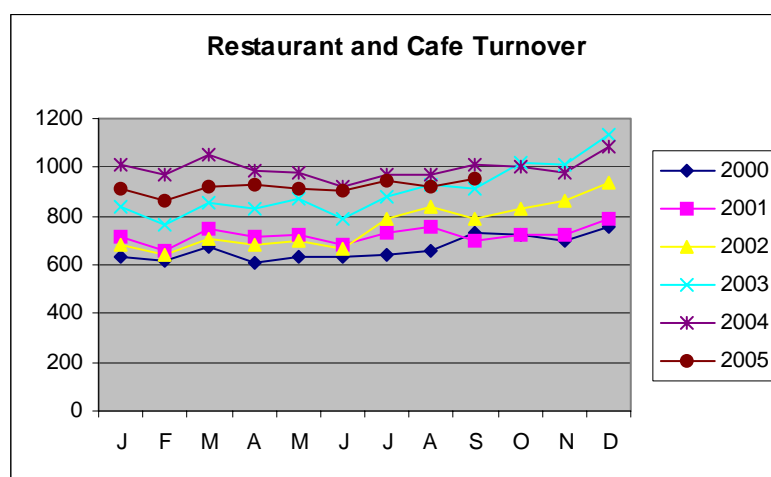


Figure 1- Restaurant Industry Turnover 2000 - 2005

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

² Cafes and Restaurants Industry Survey, ABS 8655.0

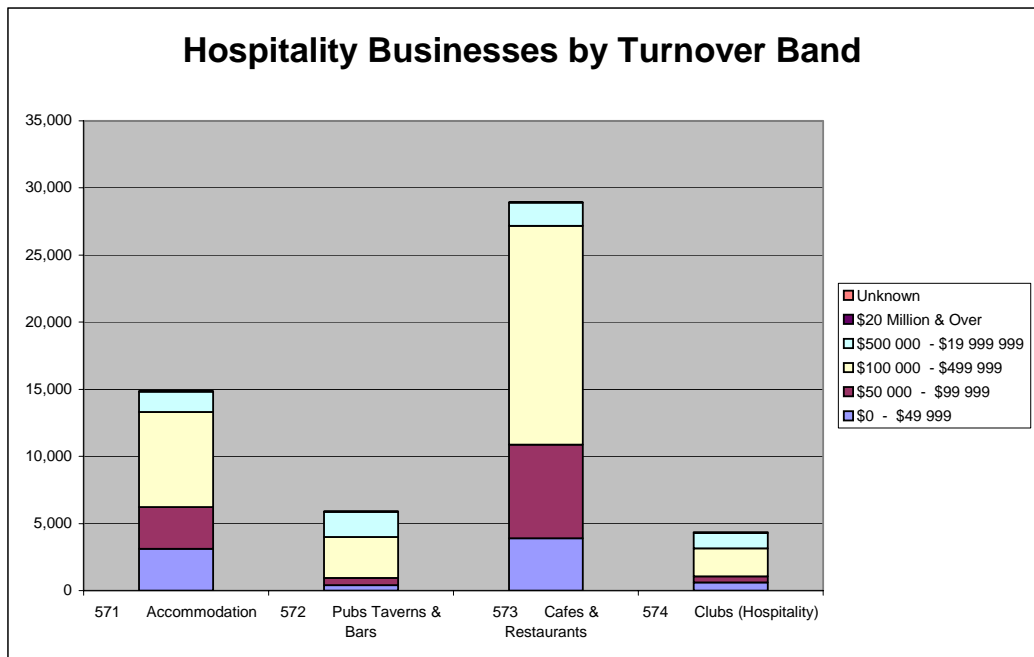


Figure 2 – Hospitality Businesses by Turnover Band, ABS Business Register

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.

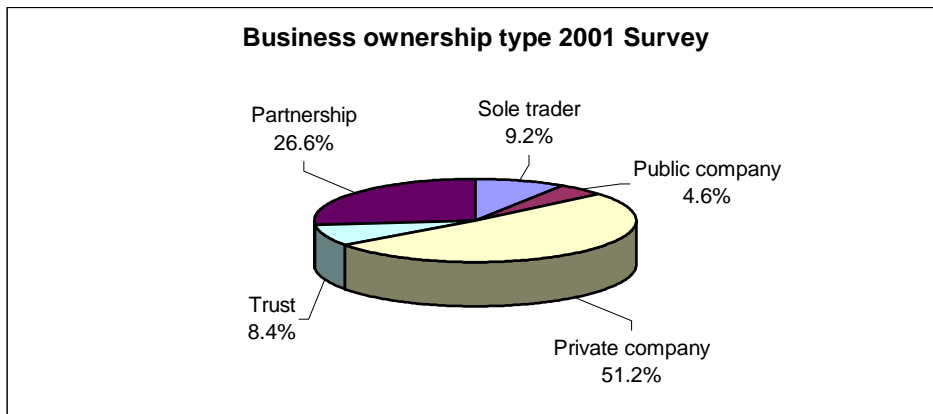


Figure 3 – Business Ownership Type, Restaurant & Catering Operations Report, R&CA, 3rd Edition.

25% of Australian restaurants are located in Victoria, 3% in the ACT and 1% in the Northern Territory.

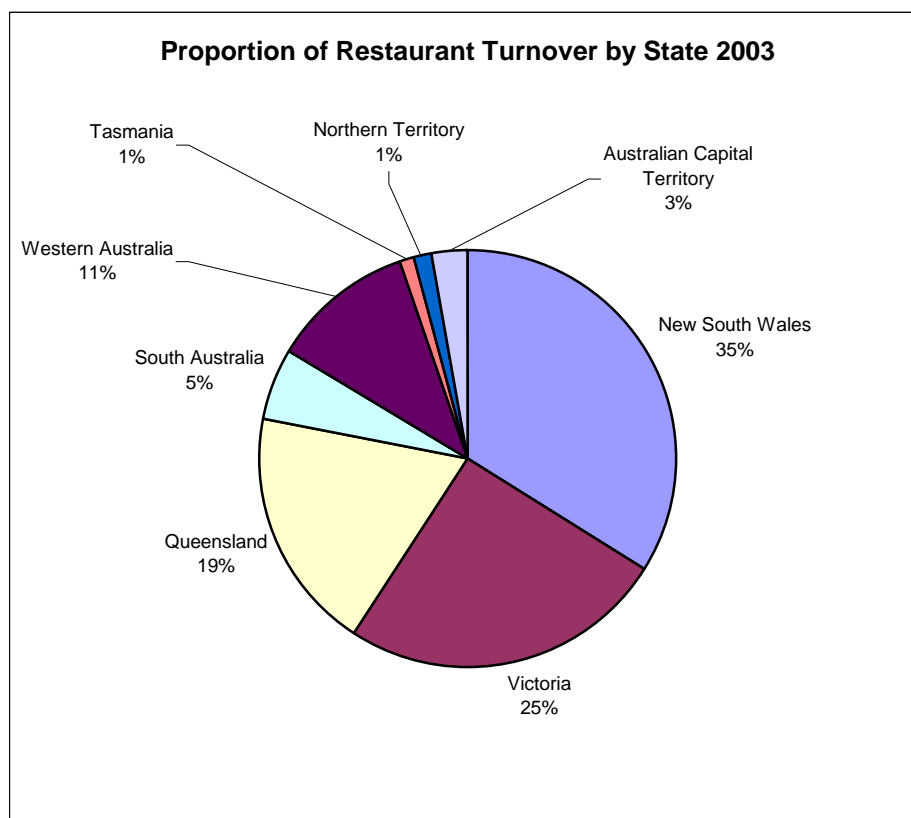


Figure 4 – Proportion of Restaurants by State (based on turnover)

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%³ 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.

³ ABS Employed Persons, Café and Restaurant Industry, Unpublished Data, August Quarter, 2001

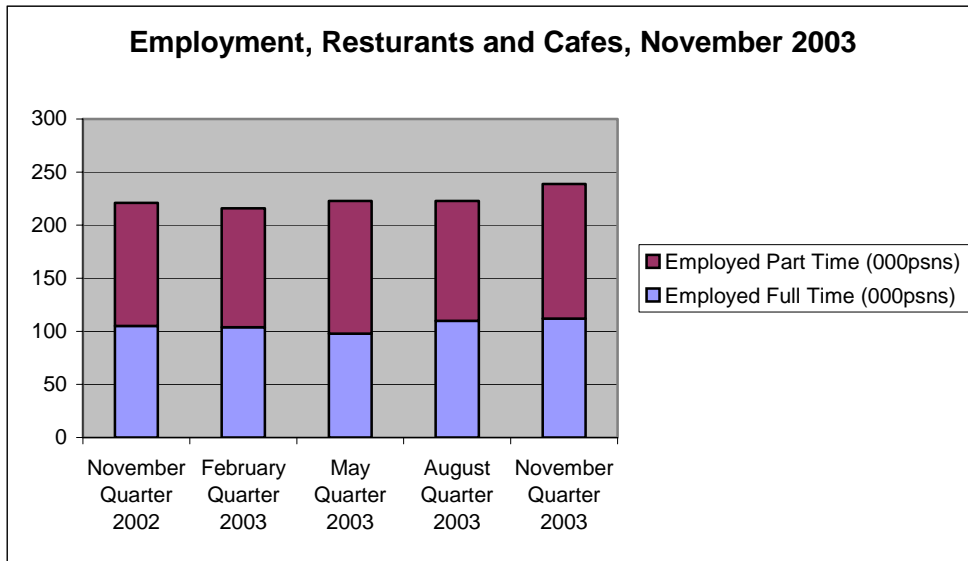


Figure 5 – Full Time and Part Time Employment, Accommodation, Cafes and Restaurants 2002 - 2003

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, cafe and catering workforce is part-time females.

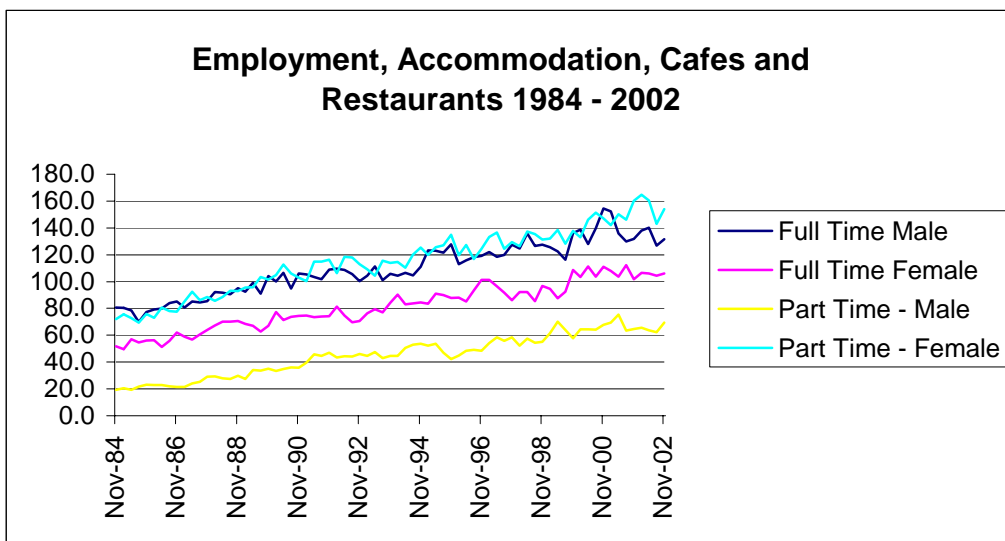


Figure 6 - Employment, Accommodation, Cafes and Restaurants 1984 - 2002

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)⁴.

⁴ ABS Forms of Employment, November 2001, ABS 6359.0

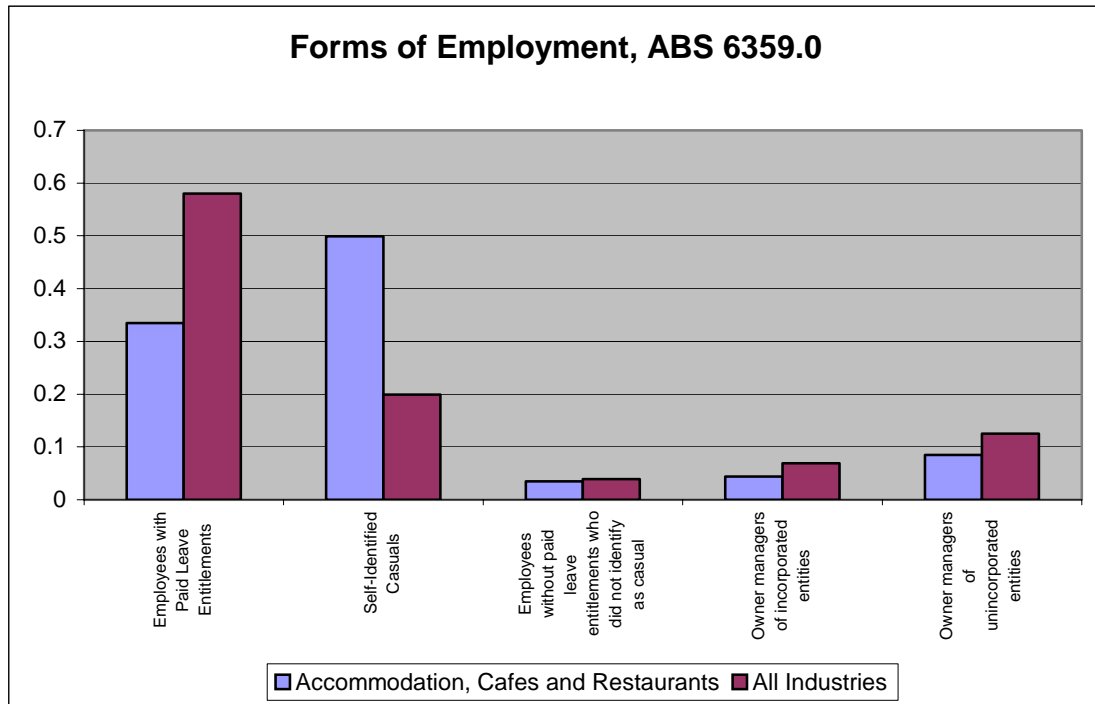


Figure 7 – Forms of Employment, ABS 2001

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%).

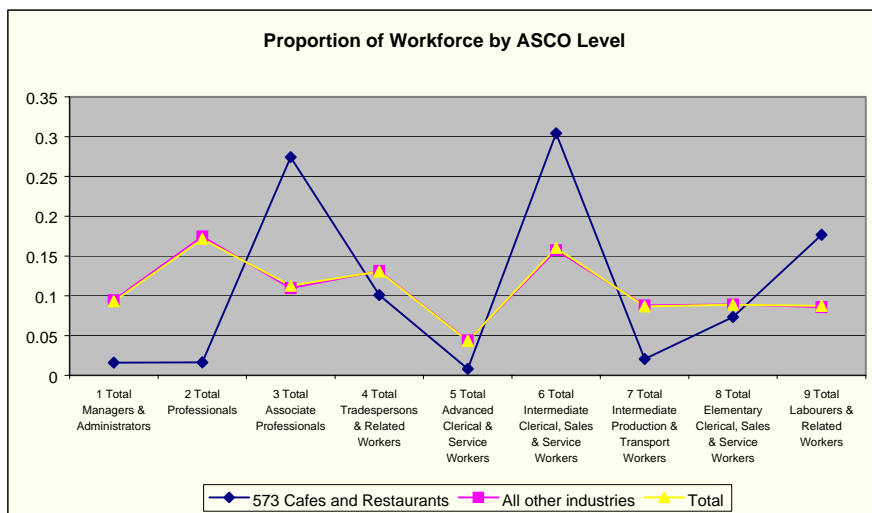


Figure 8 – Proportion of Workforce by ASCO level

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.

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%)⁵.

⁵ Employee Earnings and Hours, ABS 6305.0.55.01, May 2004

Collective agreements have been under utilised 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.

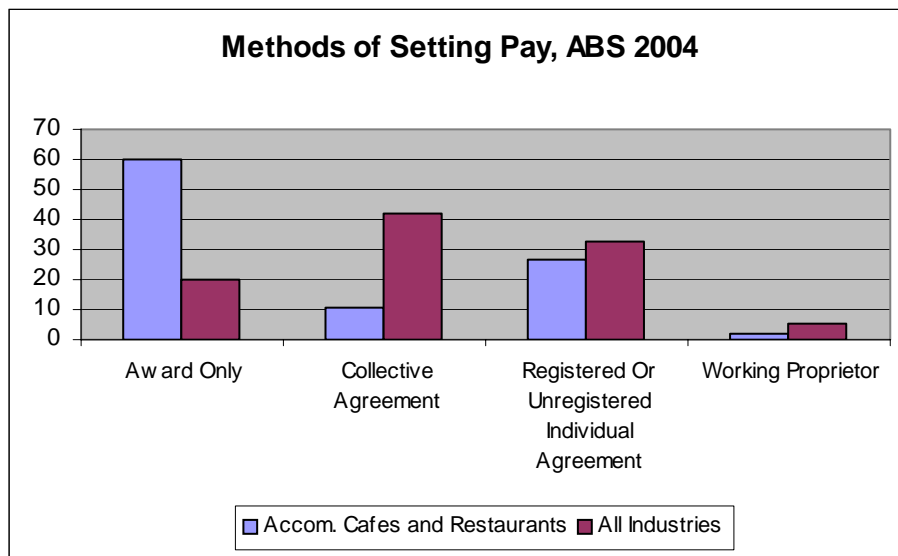


Figure 9 – Methods of Setting Pay, ABS Employee Earning and Hours, May 2004

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 2010-2011⁶. 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, over the next six years.

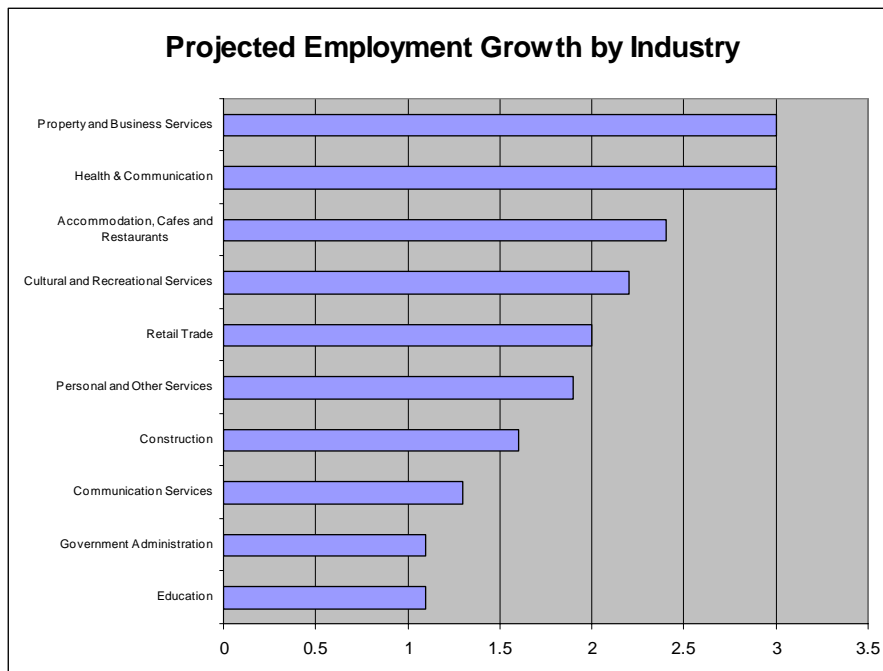


Figure 10 – Projected Employment Growth by Industry, DEWR, June 2004

⁶ DEWR Job Outlook, June 2004

The Inquiry

Restaurant & Catering Australia (R&CA) notes the wording of the motion for the reference of the bill that the inquiry not consider those elements of the bill which reflect Government bills previously referred to, examined and reported on by the committee; namely those elements which relate to secret ballots, suspension/termination of a bargaining period; pattern bargaining; cooling off periods; remedies for unprotected industrial action; removal of section 166A of the *Workplace Relations Act 1996* (the WR Act); strike pay; reform of unfair dismissal arrangements; right of entry; award simplification; freedom of association; amendments to section 299 of the WR Act; and civil penalties for officers of organisations regarding breaches.

The framework for addressing the issues below mirrors the WorkChoices Booklet. The R&CA has refrained from comment on some sections of the Bill due to the scope of this inquiry and others because they are not issues of immediate importance to the R&CA.

1. A National System

Restaurant & Catering Australia wholeheartedly supports the move toward a national workplace relations system. In a sector of industry that is made up of labour intensive, small business, the R&CA understands the complexity and confusion that reigns in the current environment. The Government is to be commended on the balance achieved in the WorkChoices package. The proposals carefully balance each element of the reforms to achieve a simple yet fair system.

R&CA acknowledges the decision to use the corporations power to allow the Australian Government to directly establish legislated minimum wages and conditions at a national level. This is an important objective and the use of Section 51(xx) of the Constitution was the only power under which this could be achieved. The Association is concerned, however, at the number of its members members that will potentially not be able to avail themselves of the benefits the reforms will bring.

Based on the rationale above, R&CA estimates some 29% of employing restaurateurs and caterers will be left out of the reforms (unless they incorporate). As noted above, these businesses are also, substantially because of their labour intensive nature, marginally profitable, and can not afford not to take advantage of the WorkChoices package, for all the reasons annunciated in the benefits of the reforms.

Restaurant and catering businesses are also overwhelmingly small businesses (94% turnover less than \$500,000 per annum) and therefore have minimal resources to commit to other than their core business (serving food and beverages to the public), which incidentally they do very well. The challenge is that effecting change, particularly in areas of human resource practice, is difficult to achieve in the restaurant and catering industry. In the implementation of WorkChoices, businesses will struggle to understand where they fit, let alone how they must change their business entity in order to avail themselves of the reforms.

2. Australian Fair Pay Commission

The establishment of an independent wage setting body, with the objective of promoting economic prosperity, is a cornerstone of the proposed system. Restaurant & Catering Australia has long held (and advocated) the view that the AIRC process for adjusting the minimum wage was fundamentally flawed and one of the most significant problems with the workplace relations system.

The Association believes that the proposed Australian Fair Pay Commission is well conceived and is supportive of the proposed responsibilities, operation and structure of the new body. The R&CA believes that, as an industry, restaurateurs and caterers have been greatly disadvantaged, in comparison to other sectors, by the past, recent decisions of the AIRC in the Safety Net Wage Case.

A 2004 report to the Department of Employment and Workplace Relations "Minimum Wages in Australia": an analysis of the impact on small and medium sized businesses, found that restaurants, cafes and caterers⁷ were the most likely businesses to have employees earning the minimum wage.

The outcome of this phenomenon is that restaurants have felt the impact of safety net wage increases more than most, as 75% of restaurants had at least one employee on the minimum wage.

The industry also argues that the casualisation of the industry (now 53% are employed less than full time) also mitigates against wage restraint. Safety net increases passed on at an hourly rate increases are magnified, through penalty rates, to further increase the wage bill for restaurateurs.

The impact of a 6% increase on an average business for which labour accounts for 15% of costs is 1% of the bottom line. Restaurant businesses operate on 35-40% labour costs. An 8% increase for these businesses⁸ has around a 3% impact on their bottom line.

In short restaurants, cafes and caterers could not afford to continue to sustain increases of the magnitude awarded by the Australian Industrial Relations Commission (AIRC) in the Safety Net Wage Case of 2003, 2004 and 2005. This lack of capacity to pay has been presented, to no avail, before the AIRC.

Restaurant & Catering Australia supports the establishment of the Australian Fair Pay Commission (AFPC) and its role in setting overall minimum wages, for a range of levels and classification and casual loadings. The Association urges thorough consideration by the Commission, of the impact of increases on various sectors of industry and, in particular, the impact of the fast growing, labour intensive service sectors, such as the restaurant and catering industry.

Restaurant & Catering Australia notes that the decisions of the AFPC will be required to be reflected in agreements made under the WorkChoices legislation in the future, whereas, agreements signed prior to the WorkChoices changes will not be affected by changes agreed by the AFPC. Matters of detail such as this will need to be carefully and thoroughly explained in the implementation period and beyond to ensure that inadvertent non-compliance more prominent is not a feature of the system moving forward.

⁷ Accommodation, cafes and restaurants

⁸ Based on magnification effects detailed above.

3. Australian Fair Pay and Conditions Standard

Restaurant & Catering Australia welcomes the initiative to establish the Australian Fair Pay and Conditions Standard as a benchmark for Agreements. The WorkChoices package establishes a clear, simple safety net of conditions, which is important to the harmonious operation of the workplace relations system. The R&CA supports the use of this standard and the basis for agreements, as opposed to the relevant award.

The Association contends that the relevant awards, in the restaurant and catering industry, are outmoded and irrelevant to many of the conditions in the industry. This being the case, the industry has, on a number of occasions, considered challenging the conditions within the awards. In most cases, however, the cost of such an action, due to certain opposition from the Unions involved, would outweigh the benefits, given the option to make agreements above the award.

The Association believes that the industry will welcome opportunity being able to eliminate some loadings (such as those that apply for work after 7pm in the evening, as 57% of business in restaurants is transacted after this time) and be able, by agreement, to negotiate sensible conditions, given the protection of the Australian Fair Pay and Conditions Standard.

Hours of Work

Restaurant & Catering Australia notes the provisions to lock in a maximum of 38 ordinary working hours per week (averaged over a period of up to twelve months) into the AFCS. The application of this standard across all employment agreements and the locking in of the standard hours with the minimum adjusted rate (based on the minima set by the AFPC) will create a fair load with all employment arrangements having to be reviewed every time the Australian Fair Pay Commission hands down a decision.

The Association is also concerned that the application of maximum ordinary hours to all levels of employees could have the potential for disputation beyond that in the current system. This new prescription regulates an area that is previously unregulated and essentially problem free. The R&CA questions why there has not be some limitation of these minimum hours to employees at or around the levels of minimum wages and/or conditions.

There are a considerable number of roles in the restaurant and catering industry where remuneration is based on the job to be done. The imposition of a 38 hour ordinary hours framework around such roles is regarded as unnecessarily restrictive.

Annual Leave

Restaurant & Catering Australia notes the proposed Australian Fair Pay and Conditions standard of four weeks of paid annual leave per year. The consideration of pro-rata arrangements for part-time and employees who have not yet worked a year is also noted. The Association rejects, however, the proposed additional weeks annual leave for employees of businesses working 24 hours a day 7 days per week and regularly working rotating shifts.

A restaurant or catering business that operates around the clock every day can no more afford an additional 2% on the wage bill than any other restaurant business. This additional weeks leave is not a common provision in the relevant awards for restaurant businesses and should be further considered in its broad application.

R&CA is also disappointed at the quarantining of 2 weeks leave from the cashing out provision. The Association is aware of a number of circumstances, in the current system, where in agreements it has been mutually beneficial to an individual circumstance for all leave to be 'cashed out'. The Association believes that the proposed compliance provisions are sufficient to ensure that leave is not reduced against an employees will. This being the case, it is questioned why the existing flexibility to cash out all annual leave could not be retained.

Personal / Carers Leave

Restaurant & Catering Australia recognises the safety net of up to 10 days personal and carers leave to be established under WorkChoices. The Association is concerned that the Bill proposes that this leave can not be rolled-up in an hourly rate of pay in an agreement.

Many employers in the restaurant and catering industry, including those profiled in AWA Ambassadors program, have approved agreements including a rolled up hourly rate, including sick leave, as a means of encouraging their staff not to take sick leave. This practice has been common as template agreements, established in conjunction with the Office of the Employment Advocate, have supported this practice.

The Association notes that the Fair Pay and Conditions standard will also include two days of compassionate leave per occasion. Whilst it is clear that compassionate leave includes leave to visit a seriously ill or dying relative or attending a funeral, it is not clear for instance how many times leave may be taken to visit a relative with a recurring serious medical condition. It is important that the legislation and/or the regulations surrounding the legislation make these facets of the conditions clear.

4. Agreements

Restaurant & Catering Australia considers this aspect of the WorkChoices package to be the crux of the reforms. Direct bargaining between the employee and employer in the workplace is the only way to truly reflect the individual needs of both parties and as jobs and workers become more and more different so the need to accommodate individual difference become more important.

The WorkChoices package establishes a very effective framework for the establishment of agreements, whilst maintaining the underpinning rights of employee and employer. The R&CA is very supportive of the way in which the WorkChoices package breaks the nexus between agreements and awards. The establishment of the AFPCS as the benchmark for the conditions in agreements, instead of the relevant award through the no disadvantage test, is greatly appreciated. The protection of certain award conditions in the negotiation of new agreements is a constructive way of dealing with maintaining industry standard conditions, whilst providing the basis for true bargaining.

Usage of Agreements in the restaurant and catering industry

Australia's restaurant and catering industry is still more award reliant than the average industry. In its report 'Methods of Pay Setting, May 2004', the Australian Bureau of Statistics cited 60% of the workforce in the accommodation, café and restaurant industry, was reliant on the award for setting wage rates compared to 20% for all industries.

In contrast, only 38% were covered by agreements (either registered or unregistered). This compared to 74% across all industries.

The usage of Australian Workplace Agreements is to some extent hampered, in their spread across the restaurant industry by the relatively fewer number of corporations in this sector. Of the 28,900 restaurants, cafes and caterers, 35.8% are sole traders or partnerships. 25% of those are in Victoria and 4% in the Territories.

Whilst this is the case, the Office of the Employment Advocate reports⁹ that 16.1% (the largest proportion) of AWAs signed in the three months to June 2005 were in the accommodation, cafes and restaurants industry¹⁰. This compares to 11.7% in the last three years and 9.9% to date.

The OEA data also shows that 76.4% of agreements in the accommodation, café and restaurant industry are AWAs and only 23.6% certified agreements. This is the mirror opposite to the all industry picture. It is likely this is due predominantly to the size of businesses in the industry and the low level of unionisation.

Between 8% and 9% of employees in the accommodation, café and restaurant industry are Union members¹¹. This proportion is lower than most other industries with the all industry average some 22%. In accommodation, cafes and restaurants the 2003 proportion is two-thirds of the number of trade union members in this industry in 1998.

The OEA reports 53,600 active AWAs in the accommodation café and restaurant industry. This is approximately 10.4%¹² of total employment in this industry. It is likely, however, that due to the recent promotional efforts by the OEA and the R&CA, that the majority of these new agreements are in the restaurant, café and catering sectors. As a proportion of restaurant, café and catering industry employment, the number of agreements would represent some 20%.

There has been a very significant increase in the take up of Australian Workplace Agreements in the restaurant, café and catering industry over the past six months. In the five months to July 2005, the OEA reports 11,612 AWAs¹³ made in the restaurant and catering industry. This is an additional 4.6% of the workforce in this five months alone.

Implementation

The impact of the package of WorkChoices amendments is the most significant change to work practices this decade. Restaurant & Catering Australia considers the implementation load of these changes to be of a similar magnitude to the introduction of the Goods and Service Tax. The reforms are significant in the transition phase and place an on-going workload on employers and their representative organisations.

It is understood that the objectives of simplicity and fairness have been in conflict many times throughout the development of the legislation (and principles behind the legislation). It must be acknowledged that the quest for protection of the rights of employees, within the legislation, has created significant complexity and this must be compensated for in the implementation of WorkChoices. Employers will need significant support in moving to the new system and it is clear that this support needs to be provided by the organisations to whom employers turn for this support - industry organisations.

The public information on the WorkChoices package has been very strong which has, as intended, raised public awareness of the necessity of reforms. It has also raised a

⁹ OEA – AWA employee data, to 30 June 2005

¹⁰ ANZSIC classifications covering restaurants, cafes and caterers

¹¹ Employee Earnings, Benefits and Trade Union Membership, Australia (6310.0), 2003

¹² ABS 6291.0.55.001 Labour Force, Australia, Detailed - Electronic Delivery

¹³ OEA AWA Statistics, to July 2005

number of questions in the minds of employers as to how they will manage the change to the new system. In contrast to other systemic changes, such as GST, advice on wage and employment issues, is sought from industry associations and not Government or third parties (such as Accountants). In a Sensis Business Index Special Report for the Department of Industry, Tourism and Resources – How SMEs Access Information, it was found that on wage and employment issues industry associations were by far the first ranked source of information.

Restaurant & Catering Australia believes that the Federal Government needs to, as a matter of some urgency, undertake detailed professional development of Workplace Relations practitioners in Industry Associations. In addition a significant information campaign, through Associations, to their members is required.

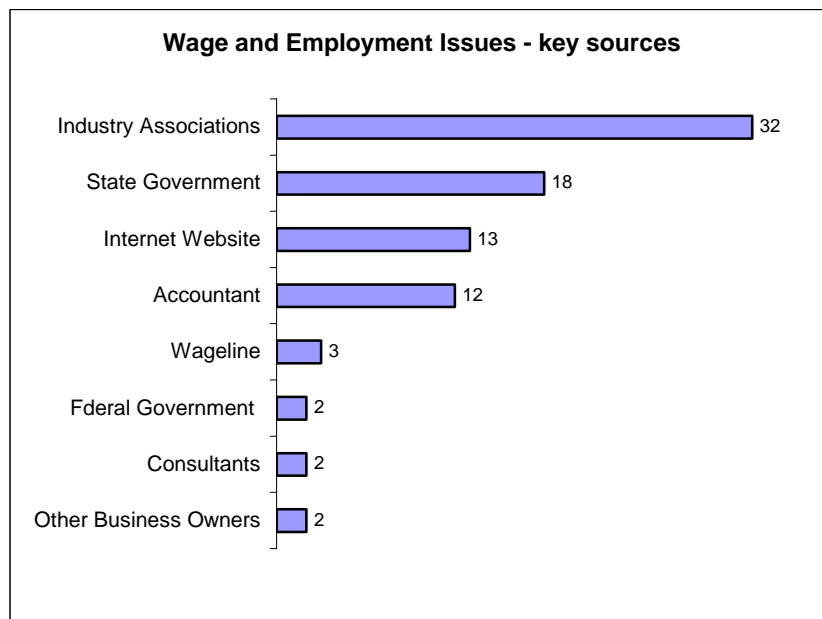


Figure 11 - Sensis Business Index Special Report for the Department of Industry, Tourism and Resources
How SMEs Access Information

The Way Forward

Restaurant & Catering Australia believes that the reforms proposed in the WorkChoices package represent the most constructive and well thought out suite of reforms ever proposed in the area of workplace relations. They represent a careful and clear balance of interests whilst providing for a steam-lined and more efficient system.

R&CA considers that without the reforms proposed the restaurant and catering industry would not be sustainable past 2010.

There are a small number of challenges that the restaurant and catering industry can envisage now in anticipation of the implementation process. The points below highlight some of the aspects of the reforms that this industry body believe should be considered as the next steps are taken.

They are:

- That the Government adequately resource the implementation of WorkChoices, through one-on-one consultants able to visit businesses, through their industry associations, and the conduct of intensive workshops, to ensure that businesses understand their obligations and benefits within the changes. In addition, where there are concentrations of unincorporated businesses, these industries receive support to promote incorporation.
- That the AFPC consider, in its scope to examine the capacity for the unemployed and the low paid to obtain and remain in employment, the capacity of industries, in which employment growth is significant, to sustain the levels of wage increases proposed.
- It is recommended that the additional weeks annual leave (for employees of businesses working 24/7) should be amended to apply only where it is a condition of the relevant award (much like other conditions in the WorkChoices package) – it should not be a feature of the Australia Fair Pay and Conditions standard.
- That the Australian Fair Pay and Conditions Standard be restructured in such a way as to allow the flexibility to roll-up all annual leave and sick leave into a rate of pay where the employee and employer genuinely agree to such conditions.
- The arrangement currently in place with the Restaurant & Catering Associations, where an outposted officer from the OEA works with the industry association, should be continued. The project, due to finalise in December 2005, has been an outstanding success and the restaurant and catering industry has made significant headway in increasing the number of employees and employers making agreements. The industry still has a long way to go and the extension of this project would be a good way to continue to bridge the gap.
- Information dissemination on the benefits of agreement making should also take account of some fundamental differences in agreements pre and post WorkChoices, such as pre agreements being shielded from AFPC decisions and post not.
- That the Federal Government undertake detailed professional development of Workplace Relations practitioners in industry associations.