



Restaurant  
& Catering

SAVOUR  
AUSTRALIA



30 July 2018

Committee Secretary  
Education, Employment and Small Business Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

E: [eesbc@parliament.qld.gov.au](mailto:eesbc@parliament.qld.gov.au)

Dear Secretary,

As the national industry body representing the interests of over 8,000<sup>1</sup> cafés, restaurants and catering businesses throughout Queensland, Restaurant & Catering Australia (R&CA) welcomes the opportunity to provide a submission to the Queensland Government's inquiry on the incidence of wage theft.

R&CA in no way condones the actions of any business-owners in the café, restaurant and catering sector who are not fully compliant with the various legal and regulatory obligations to their staff. R&CA is committed to ensuring the highest possible standards of compliance with the relevant legal and regulatory frameworks across the hospitality sector, both in Queensland and at a national level. R&CA argues that the strongest possible sanctions under the law are warranted for business-owners who have been found to be deliberately and systematically avoiding compliance with their workplace obligations towards their staff. These practices undermine the integrity of the hospitality industry and unfairly disadvantage and penalise business-owners who operate their businesses legitimately and in full compliance with the law.

### Overview of the Queensland Hospitality Sector

The café, restaurant and catering sector currently generates \$4.7 billion in turnover annually for the Queensland economy (\$8.5 billion when including turnover generated from takeaway sales).<sup>2</sup> The industry currently employs 123,400 people across the state and is expected to generate an additional 21,100 new positions by May 2022.<sup>3</sup> According to the most recent ABS data available, the café, restaurant and catering sector consists of 7,507 cafés and restaurants and 589 catering

<sup>1</sup>ABS (2018) 8165.0 - Counts of Australian Businesses, including Entries and Exits, Jun 2013 to Jun 2017.

<sup>2</sup>ABS (2018) 8501.0 - Retail Trade, Australia, May 2018.

<sup>3</sup>Department of Jobs and Small Business (2018) Employment Projections to May 2022.



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businesses in operation as at 30 June 2017. Of the approximately 8,000 businesses in the sector, over 90 per cent are small businesses employing 19 people or less.<sup>4</sup>

### **Educative Function of R&CA**

R&CA recognises its educative function as an industry association and to this end, has taken a proactive approach towards informing and educating individual businesses as to their various workplace obligations and responsibilities towards their staff. The Association maintains a workplace relations advisory service staffed by industrial relations specialists which assists members in interpreting and applying the Fair Work Act as well as correcting any errors which may have occurred. The enquiries fielded by R&CA's workplace relations advisory service cover a wide range of workplace relations issues relating to correct pay rates under the Awards, entitlements such as annual leave, personal leave and superannuation and penalty rates on Sundays and Public Holidays. R&CA estimates that its workplace relations advisory service fields over 1,200 calls from hospitality operators with enquiries in any given year.

In addition to this, R&CA constantly stresses the vital importance of businesses complying with their relevant legal and regulatory obligations, including workplace relations legislation, through its various communication channels with members and the industry more broadly. R&CA's communication channels include direct members emails distributed on a weekly basis, bespoke newsletters and EDMs, company website updates and the publication of a monthly industry trade magazine. R&CA various communications channels also includes updating members on any relevant changes in workplace relations legislation that may have occurred impacting the operation of their businesses.

### **Collaboration with the Fair Work Ombudsman**

Furthermore, R&CA has worked collaboratively and proactively with the Fair Work Ombudsman (FWO) to address the current issue of non-compliance across the hospitality sector. R&CA is aware of a recent FWO report published in July 2018 which found that 60 per cent of 73 audited restaurant businesses in Brisbane's Fortitude Valley area were found to be non-compliant with their workplace obligations.<sup>5</sup> Of the most common reported breaches were underpayment of wages and failure to provide employees with required documentation such as payslips.<sup>6</sup> Other reported issues highlighted in the FWO's 'Food Precincts Campaign' included 'non-provision of meal breaks, incorrectly classified workers and non-payment of overtime'.<sup>7</sup> Such a high proportion of non-compliance is clearly an unacceptable outcome and R&CA will continue its work with the newly appointed FWO to help eliminate incidences of non-compliance across the sector. To this end, the Association has had a collaborative Memorandum of Understanding (MOU) in place with the FWO for a number of years, which has worked to the mutual benefit of both organisations.

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<sup>4</sup> ABS (2018) 8165.0 - *Counts of Australian Businesses, including Entries and Exits, Jun 2013 to Jun 2017*.

<sup>5</sup> Fair Work Ombudsman (2018) *FWO's Food Precincts campaign returns \$471,904 in wages owed to hospitality workers*, Media Release, 11 July.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

R&CA, however, notes that it does not have the capacity or resources to act as a de facto ombudsman in the pursuit of businesses who have failed to comply with their various workplace relations obligations. As an industry association, R&CA believes that this is outside the scope of the organisation. In order to ensure that there is adequate policing of non-compliance across the sector, R&CA argues that the resources of the FWO should be significantly bolstered so that it is properly equipped to conduct its mandated role. R&CA notes that the current Coalition Government has already committed to 'delivering a \$20 million funding increase for the capabilities and workforce of the Fair Work Ombudsman'.<sup>8</sup>

### **Prevalence of the Black Economy and Federal Government's Black Economy Taskforce**

In addition to instances concerning underpayments and failure to pay staff entitlements, R&CA has also worked closely with the Federal Government's Black Economy Taskforce to address issues relating to the black economy in the hospitality sector. The main manifestation of the black economy as it relates to the hospitality sector is the payment of workers' wages in cash. R&CA notes that this practice is, in many cases, driven by employees asking their employers to be paid in cash. In a survey of R&CA members, roughly one-quarter (26.9 per cent) of hospitality sector businesses indicated that their staff members had requested cash-in-hand payments at some point in time. When asked to provide the reasons why staff requested cash-in-hand payments, the most commonly reported answers were to avoid tax or losing Centrelink payments and other Government benefits. Businesses also reported that some staff made requests to receive cash-in-hand payments due to specific restrictions on their visas.

R&CA argues that the prevalence of the black economy also significantly disadvantages and penalises legitimate business operators who act in accordance with their various legal and regulatory obligations. R&CA's feedback to the Black Economy Taskforce, provided in its submissions and meetings with the Chair, emphasised four explicit recommendations designed to minimise the occurrence of the black economy in the hospitality sector:

- Simplifying the existing regulatory system facing small businesses and reducing barriers to compliance;
- Pursuing policies which facilitate easier acceptance of non-cash payments;
- Reducing the costs involved in the current business operating environment; and
- Increasing synergies and data-sharing across government agencies at both a state and federal level.

R&CA welcomed the response of the Federal Government to the findings of the Black Economy Taskforce as part of the 2018-19 Federal Budget<sup>9</sup> which acknowledged R&CA's feedback in its findings. Many of the high-priority recommendations contained in the final report may be of

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<sup>8</sup> *The Coalition's Policy to Protect Vulnerable Workers* (2016) <https://www.liberal.org.au/coalitions-policy-protect-vulnerable-workers>

<sup>9</sup> Australian Treasury (2017) *Black Economy Taskforce - Final Report*, October.

relevance to the findings of this parliamentary inquiry, including ‘making enforcement more visible, better tailored to the offence and more effective’<sup>10</sup> and ‘improv(ing) agencies’ ability to enforce existing laws by promoting better sharing of data and more modern data analytics’.<sup>11</sup> R&CA argues that continued, decisive action targeting the black economy as it relates to the hospitality sector will help to lift overall rates of compliance and eliminate practices such as the underpayment of wages and other entitlements.

### **Distinction between deliberate underpayments and genuine errors**

R&CA believes however that a distinction must be drawn between business-owners’ deliberate and systematic non-compliance with workplace regulation and genuine mistakes and oversights which are often immediately corrected upon their discovery. R&CA believes that the occurrence of genuine and accidental errors in the payment of wages, superannuation and other entitlements are partially due to the inherent complexities of Australia’s workplace relations system. R&CA would caution against the categorisation of deliberate, systematic non-compliance and genuine, accidental errors as interchangeable as far the relevant enforcement mechanisms and penalties are concerned. Any overarching strategy designed to address instances of underpayments and non-compliance across the sector must recognise the difficulties in navigating Australia’s workplace relations system.

### **Complexities of Australia’s Workplace Relations System**

Australia’s workplace relations legislation and the current structuring of the Awards system is inherently complex and consequently can be difficult for business-owners to fully comprehend. R&CA believes that the difficulties some business-owners experience in understanding their workplace obligations may contribute to some genuine errors and oversights being made thus resulting in accidental non-compliance. The volume of calls received by R&CA’s workplace advisory service with hospitality operators seeking clarification on aspects of the Awards system is evidence of the various complexities at hand. In order to minimise the propensity for accidental errors and oversights being made, R&CA argues that simplification of Australia’s workplace relations system is necessary.

R&CA again stresses it in no way condones café, restaurant or catering businesses failing to comply with workplace relations regulation. R&CA has previously stated that the practice of deliberately underpaying staff wages and entitlements, alongside other areas of workplace relations non-compliance, undermines the integrity of the sector and destabilises business-owners who fully abide by their various legislative and regulatory obligations. This, in turn, creates an unfair playing field across the industry which unfairly penalises legitimate business-owners. R&CA has worked proactively alongside the FWO and other government stakeholders to address the

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<sup>10</sup> Ibid, p.4.

<sup>11</sup> Ibid.

operation of this unfair playing field and will continue its collaborative efforts to help minimise non-compliance across the sector.

R&CA greatly appreciates the opportunity to provide a submission to this inquiry. Should there be any matters raised within this submission that you wish to discuss, please do not hesitate to contact me on or [REDACTED]

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Juliana Payne', written in a cursive style.

**Juliana Payne**  
**Chief Executive Officer**  
**Restaurant & Catering Australia**