



Restaurant
& Catering

SAVOUR
AUSTRALIA



29 March 2019

Mr Tony Beech
Inquiry into Wage Theft in Western Australia
By email

Dear Mr Beech

Restaurant & Catering Australia (R&CA) welcomes the establishment of an Inquiry into Wage Theft in Western Australia and that you, as a former Chief Commissioner of the Western Australian Industrial Relations Commission, have been appointed to undertake it.

Restaurant & Catering Australia is the only national industry association representing the interests of over 4,000¹ café, restaurant and catering businesses in Western Australia alone, R&CA is therefore well-placed to provide comment on relevant policy issues affecting the sector and is pleased to provide our submission to the inquiry.

R&CA has been actively involved in discussions concerning non-compliance across the sector, most recently through its submission to a similar inquiry conducted in Queensland. Many of the points discussed in this submission mirror those provided in R&CA's submission to the Queensland Parliament's Education, Employment and Small Business Committee and referred to in their final report *A fair day's pay for a fair day's work? Exposing the true cost of wage theft in Queensland* published in November 2018.² R&CA has also liaised with the Victorian Government regarding its election proposal to introduce laws making the underpayment of wages and entitlements a criminal offence, punishable by up to 10 years jail and fines in excess of hundreds of thousands of dollars.³

Overview of the Western Australian Hospitality Sector

The café, restaurant and catering sector makes a significant contribution to the Western Australia economy, generating nearly \$3.5 billion in turnover per annum.⁴ This figure increases to over \$5.6 billion when including turnover generated from takeaway sales.⁵ Over the 2016-17 financial year, the number of café and restaurant businesses in the state grew by 5.5 per cent.⁶ Collectively, the

¹ Australian Bureau of Statistics (2018) 8165.0 - Counts of Australian Businesses, including Entries and Exits, Jun 2013 to Jun 2017.

² *A fair day's pay for a fair day's work? Exposing the true cost of wage theft in Queensland* (2018) Report No. 9, 56th Parliament Education, Employment and Small Business Committee, November.

³ Victorian Government (2018) *Dodgy Employers To Face Jail For Wage Theft*, Media Release, 26 May.

⁴ Australian Bureau of Statistics (2018) 8501.0 - Retail Trade, Australia, November 2018.

⁵ Ibid.

⁶ Ibid.



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industry in Australia currently employs 41,800 people across the state and is expected to generate an additional 8,600 new positions by May 2023.⁷ According to the most recent ABS data available, the café, restaurant and catering sector consists of 2,517 businesses with 2,263 cafés and restaurants and 254 catering businesses in operation as at 30 June 2017. Significantly, over 76 per cent of all Western Australia's cafés, restaurants and catering businesses are small businesses employing 19 people or less.⁸

R&CA Policy Position

R&CA has outlined its position regarding the issue of wage theft in previous representations to governments and other stakeholders. R&CA in no way condones the actions of any business-owners that are not fully compliant with the various legal and regulatory obligations to their staff. R&CA would also like to take the opportunity in this submission to reaffirm its commitment to ensure the highest possible standards of compliance with the relevant legal and regulatory frameworks across the hospitality sector, in all Australian states and territories, including Western Australia. Another key aspect of R&CA's overarching policy position is that the strongest possible sanctions under the law are warranted for any business-owners found to be deliberately and systematically avoiding compliance with their workplace obligations towards their staff. R&CA is dismayed and frustrated by these practices believing that they significantly 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.

Definition of Wage Theft

In discussions surrounding the issue of 'wage theft', many other employer groups, peak bodies and industry associations have expressed their opposition around the use of the term 'wage theft'. R&CA would also argue against the use of 'wage theft' as a catch-all term in the belief that it does not adequately capture the full scope of activities which this Committee is seeking to examine. For instance, employers failing to provide employees with pay slips or paying undeclared cash wages is explicitly against the legal obligations of business-owners towards their staff yet is often mentioned as part of a broader problem concerning underpayment of wages and entitlements and therefore covered by the umbrella term 'wage theft'. Given these inaccuracies, R&CA would contend that use of the term 'non-compliance' is more appropriate to capture the scope of activities currently associated with the term 'wage theft'.

Educative Function of R&CA

Given the significant reach of the Association to its members and wider connections with industry, R&CA acknowledges and emphasises the educative role it plays in informing individual business-owners of their various workplace obligations and responsibilities towards their staff. R&CA has taken a proactive approach in performing this role, maintaining a workplace relations advisory service staffed by industrial relations specialists which assists members in interpreting and applying the Fair Work Act and the various modern awards 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, breaks and superannuation and penalty rates on Sundays and Public

⁷ Department of Jobs and Small Business (2018) *Employment Projections to May 2022*.

⁸ Australian Bureau of Statistics (2018) 8165.0 *Counts of Australian Businesses, including Entries and Exits, Jun 2012 to Jun 2017*.

Holidays. R&CA incurs a significant cost to maintain this service for members and devotes significant resources to ensuring its continued operation. This service is used extensively by Association members, receiving an estimated 1,200 calls from hospitality operators with enquiries in any given year. This does not include any additional emails fielded by members of the Association by businesses with other enquiries related to their legal and regulatory responsibilities and obligations.

In addition to maintaining an on-demand workplace relations advisory service, R&CA has also used the various communications channels at its disposal to continually emphasise the vital importance of businesses complying with their relevant legal and regulatory obligations. R&CA's communication channels include direct members emails distributed on a weekly basis, bespoke newsletters and EDMs, company website updates, social media platforms and the publication of an industry trade magazine. R&CA also provides members with bespoke EDMS to advise of any relevant updates in workplace relations legislation that may have occurred impacting the operation of their businesses.

The Association also provides significant resources to members to assist with their HR practices offering them the best chance of a comprehensive grasp of their legal obligations in employing staff.

Collaboration with the Fair Work Ombudsman

Furthermore, R&CA has a collaborative working relationship with the Fair Work Ombudsman (FWO) to address issues of non-compliance across the hospitality sector, which has resulted in a Memorandum of Understanding (MOU) that has now been in place for several years. R&CA is strongly committed to continuing its relationship with the FWO and updating its MOU wherever necessary to reflect the priorities of both organisations. R&CA argues that the resources of the FWO should be significantly bolstered so that it is properly equipped to pursue businesses who continually fail to comply with their various legal and regulatory obligations. R&CA also notes that there is a strong likelihood that businesses failing to comply with their obligations in regards to staff wages and entitlements, are also failing to comply with other obligations such as taxation requirements.

FWO has gone on the record to state that businesses that are members of their industry association have a much higher rate of compliance than non-members, demonstrating the value that membership offers the industry, their staff and the broader community.

R&CA also notes that it does not have the capacity or resources to act as a de facto ombudsman in policing of businesses who have failed to comply with their various workplace relations obligations. R&CA believes that this is outside the scope of its role as an industry association and that this activity should continue to be undertaken by the FWO, albeit on a more comprehensive level made possible through additional resourcing and funding.

Distinction between deliberate underpayments and genuine errors

R&CA, alongside other industry and employer groups, has also expressed the view that there is a need to draw a clear and obvious line 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 objects to the use of the term 'wage theft' to

classify these activities due to the accidental nature of these mistakes and attempts to rectify them once discovered. R&CA notes that reports of these errors has occurred across many industry sectors outside the hospitality sector, with recent media reports covering alleged underpayments in other industries such as cleaning, security, hairdressing and even accountancy firms.

Although it is difficult to estimate a precise amount, R&CA believes that at least some incidences of genuine and accidental errors in the payment of wages, superannuation and other entitlements can be attributed to the inherent complexities of Australia's workplace relations system. R&CA would therefore caution against the categorisation of deliberate, systematic non-compliance and genuine, accidentals errors as interchangeable as far as 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, particularly in the absence of professional assistance from an industrial relations professional. 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.

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 and that such action would improve current rates of workplace compliance, both accidental and deliberate. R&CA believes that having overly complex workplace relations legislation is particularly problematic for industry sectors that have a comparatively high proportion of operators and employees who are from migrant backgrounds and who do not speak English as a first language. R&CA points to the high volume of calls received by its workplace advisory service with hospitality operators seeking clarification on aspects of the Awards system as evidence of the various complexities at hand.

Conclusion

R&CA would again like to take the opportunity to stress that it in no way condones or accepts café, restaurant or catering businesses failing to comply with their various legal and regulatory responsibilities and obligations. As R&CA has previously stated in this submission, as well as in other representations to governments on this issue, the practice of deliberately underpaying staff wages and entitlements and other related aspects of non-compliance with workplace regulations, undermines the integrity of the sector. These practices also destabilise legitimate operators who fully abide by their various legislative and regulatory obligations and, in turn, creates an unfair playing field across the hospitality industry. R&CA has already taken a proactive approach towards addressing this problem, collaborating extensively with the FWO to help minimise instances of non-compliance.

Once again, R&CA appreciates the opportunity to provide a submission to the Select Committee's inquiry on wage theft in Western Australia. Should there be any matters raised within this submission that you wish to discuss, please do not hesitate to contact me on 0468 328 513 or julianap@restaurantcater.asn.au

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