

(C2001/5917, C2001/4617, C2001/5720, C 2001/5721 and others)

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Level 42, Nauru House
80 Collins Street
Melbourne Vic 3000

Workplace Relations Act 1996

TITLE OF MATTER

SUBMISSION TO THE 2002 LIVING WAGE CASE

Filed by:

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AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

WORKPLACE RELATIONS ACT 1996

s.113 applications to vary awards

s.108 references of applications to vary awards

Australian Liquor, Hospitality and Miscellaneous Workers

(C2001/5719)

and

Construction, Forestry, Mining and Energy Union

(2001/4617)

and

Others

Various employees

Various industries

JUSTICE GUIDICE, PRESIDENT
VICE PRESIDENT ROSS
VICE PRESIDENT McINTYRE
SENIOR DEPUTY PRESIDENT WATSON
SENIOR DEPUTY PRESIDENT HARRISON
COMMISSIONER LEWIN
COMMISSIONER HOFFMAN

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Introduction

IF THE FULL BENCH OF THIS COMMISSION PLEASES,

My name is Law initials KJ appearing for Restaurant and Catering Australia. We have an interest in this matter.

Restaurant & Catering Australia (R&CA) is the peak national organisation representing the interests of restaurateurs and caterers across Australia. The R&CA is a federation of State Associations, all working together on national issues, on behalf of their members. Whilst, Restaurant & Catering Australia is NOT a registered industrial organisation, many of its constituent State Associations are.

The Australian Taxation Office advised that 29,551 restaurant, café or catering business had registered for the GST by early 2001. This provides the most accurate estimate of the number of such businesses in Australia.

Of these the Restaurant & Catering State Associations have 6,000 direct members. The geographical distribution of membership is representative of the distribution of businesses between States / Territories.

Restaurant & Catering Australia has not previously made submissions to the Commission in regard the Safety Net Review. This year, however, the industry believes that the situation it faces is so bleak that every effort should be made to minimise cost increases that can be externally impacted. As a result representatives of the industry, in the States have asked the Association to make representations on their behalf.

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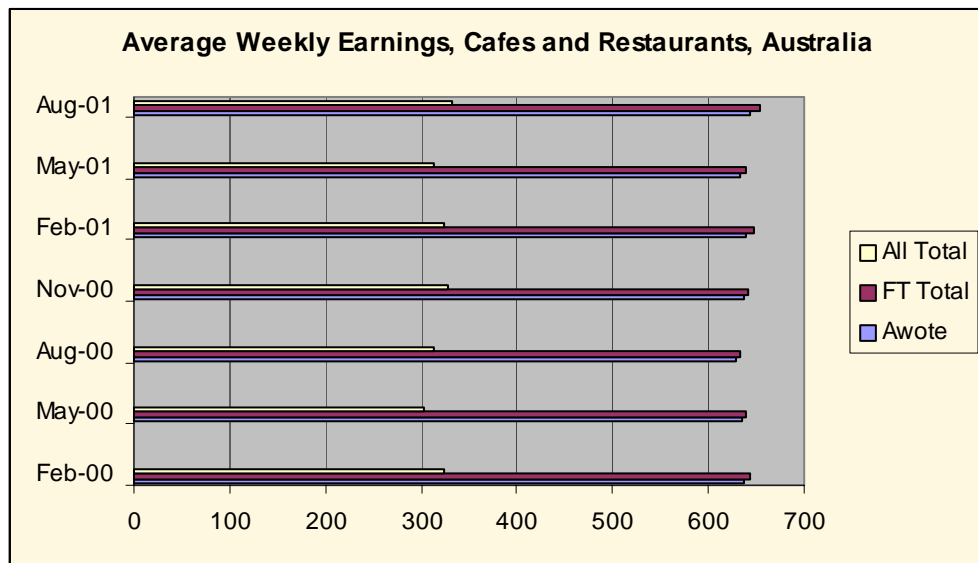
The argument presented in this submission is that the restaurant and catering industry is proportionally worse off than other industries and proportionally bears a greater burden from a dollar increase in the safety net. The conclusion drawn is therefore that the industry should only be subjected to a proportion of the increase granted. The restaurant and catering industry has:

- * A cost base that is absolutely dominated by the cost of labour
- * A very high proportion of employees on percentage penalty rates (particularly casual employees)
- * A high proportion of operative level employees
- * Very marginal profitability and is highly competitive

In addition to attempting to impact on potential labour cost increases the Association is also attempting to effect change to the costs of insurance (including workers compensation), superannuation and general taxation (including Fringe Benefits Tax).

The ACTU claims that *'last year workers received a lower wage increase than any other sector in Australian Society'*. Restaurant and Catering Australia contends that, in the restaurant industry at least, this is not so and that it was working proprietors that received the lowest wage increase. The average worker received an increase of 6% over the twelve months to August 2001.

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This above table is all employee results.

Working proprietors in the restaurant industry struggle to maintain their businesses and struggle to continue to employ the average seven people that they have engaged¹.

The ACTU claims that in the last 12 months, according to the Wage Cost Index, wage costs have risen by 3.6% and that their claim for \$25 per week would mean a 3.8% increase in wage costs.

Restaurant & Catering Australia believes that the impact of a safety net increase of \$25 per week, in the restaurant and catering industry would yield an overall increase far greater than 3.8%. The flow on effect of the increase to a large number of employees, magnifying the impact through the application of penalty rates and compounding the increases through superannuation contributions and workers compensation premiums would

¹ Employed Persons by Selected industry divided by the number of restaurant businesses 29,551 (advised by the ATO October 2001)

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conceivably mean that the \$25 per week would equate to a 5% increase in wage costs for restaurateurs and caterers.

As detailed later in the submission, average net profit as at December 2001 is estimated at 1.4%. A further 5% increase in the cost of labour (also justified later in the report) equates to an increase in the proportion of labour costs to turnover in the order of 30.6% to 32%. This would move net profit from 1.4% to significantly below 1% in fact it is likely to create a breakeven situation.

Such an increase, coupled with the other cost factors detailed in this submission would reduce the profit before tax, of an average restaurant or caterer, to well below 1% of turnover. This would significantly reduce the earnings of the 17,500 working operators of restaurants.

The less than 1% profit before tax, of the average restaurant, in reality would mean that many restaurants would cease to be viable. In many more cases the level of distribution of profits back to the operator places them, as an individual or part of a partnership, below the poverty line.

Restaurant closures, in the context of the high level of demand for restaurant services, would have a number of impacts, including :

- A surge in the number of restaurant employees (including displaced operators) in the unemployment pool ;
- A reduction in competition and therefore upward pressure on prices, which in a prominent retail area, would have an inflationary impact.

These impacts, in the restaurant and catering industry, are specific to this sector, due to the nature of the competition, the marginal profitability of

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businesses and the casualised nature of the labour market. The impacts as noted above are in conflict with the first two established principles, which the Commission has determined, in relation to cases to be considered under the *Workplace Relations Act, 1996*²

Wages in the Restaurant and Catering Industry

At August 2001 the average weekly earnings of restaurant and café employees was \$332.60. This represented a 2.6% increase over February 2000 and a 6% increase on the year previous (August 2000)³.

During this period there was one safety net review decision in May 2001, which, whilst implemented at different times according to each jurisdiction, based on ACTU projections should have yielded a 3% increase in wage costs.

The relatively low average wage, in restaurants / catering businesses, is based on the relatively high number of persons working in the industry on a less than full time basis (mainly casual). The Australia Bureau of Statistics cites 47.3% of employees, in restaurants and cafes working less than full time¹ (see figure 2 below).

Australian Bureau of Statistics <i>Employed Persons By Selected Industries by State by Full Time /Part Time/ Total</i>			
Employed Industry (3)	Persons by State	Status in Employment	
	Employed Full Time (000psns)	Employed Part Time (000psns)	Total Employed
	GRP_573 Cafes and Restaurants		
August Quarter 2001	114.6	102.8	217.4
%	52.7%	47.3%	100 %

² ACTU Living Wage Submission, February 2002

³ Employed Persons By Selected Industries by State by Full Time /Part Time/ Total, ABS December 2001

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Figure 2- Employed persons by employment status

The 6% increase in the average wage in restaurants and cafes, against the ACTUs estimate of 3%, was NOT reflected in the full time employees in the industry. Restaurant & Catering Australia contends that it is the application of the safety net increases to the base pay rates and then the application of penalty rates (that apply in such a large number of cases in the restaurant and café industry) that creates the vastly greater percentage increase in this industry.

This greater than average percentage increase is then further compounded by percentage based on-costs such as superannuation and workers compensation premiums.

In addition to the magnification of base rate movements, due to penalty rates, the flow on effect of base rate movement is enhanced in overall terms, in the restaurant and catering industry, due to the larger than average proportion of operative level positions. This is further compounded by the proportionally lower number of senior and executive positions.

An increase by 6% in the average wage (based on AWE data from the ABS) increased the 27% (of turnover) cost of wages to 28.1%. This increase was then further magnified when superannuation and workers compensation are added. The overall salary / wage / on-costs percentage of turnover increase from 29.4% to 30.6%.

The magnification effect, in the context of the bottom heavy nature of the industry, coupled with the labour intensive characteristic of the businesses has resulted in the year 2001 average wage increase of 6%, having a 1.2% negative impact on average restaurant net profit.

The Economic Environment and the Restaurant and Catering Industry

The Overall Economy

Since the beginning of the financial year the world economic outlook has been fairly grim. There are a range of views on how poorly the world economy may fair, however, there appears to be general agreement that the Australian economy will fair better than the average.

Access Economics has predicted that Australia is in a good position to transcend the global downturn and be likely to experience some 3.7% growth in the coming year⁴.

This growth rate is similar to that of the Consumer Price Index for the 12 months to December 2001. The CPI over this period rose by 3.1%.

The retail trade contributed strongly to Australia's economic performance in 2001. Retail turnover in 2001 was \$248 billion, 9.5% up on 2000. Hospitality and service businesses contributed to both the overall turnover and the increase on 2000 with a \$28.7 billion turnover in 2001, 11.5% of the total. Restaurants and cafes were 32.4% of this at \$9.3 billion against \$8.5 billion in 2000⁵.

⁴ Access Economics Five Year Business Outlook, Access Economics, January 2002

⁵ Retail Trade , ABS 8501, December 2001

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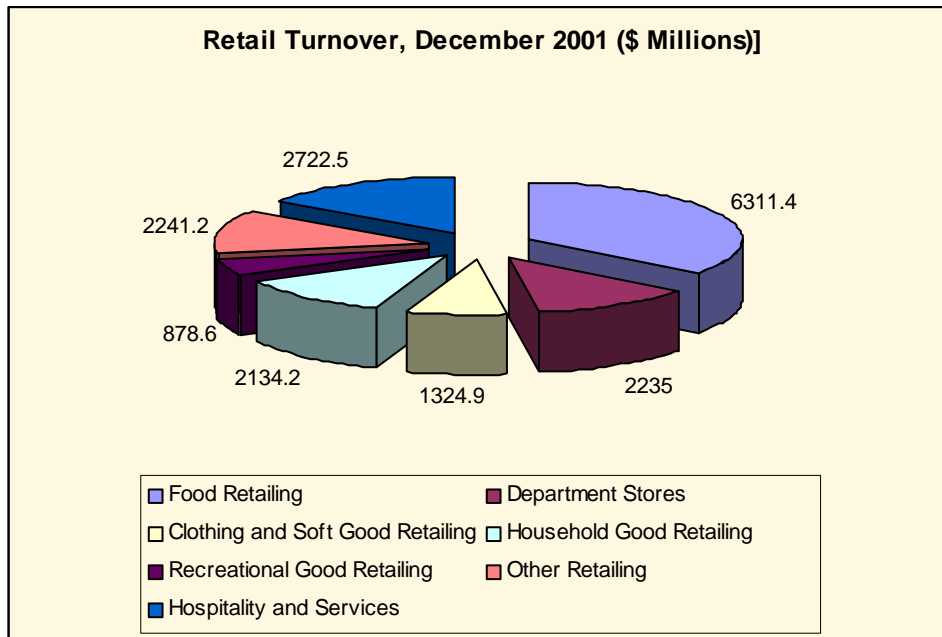


Figure 3 – ABS Retail Trade Data – December 2001

Whilst the turnover picture is positive, the turnover increase has not been due to increased prices and therefore profitability increases have not followed.

The Restaurant and Catering Industry and the Economy

As noted earlier, the Consumer Price Index for the 12 months to December 2001 rose by 3.1%.

The Australia Bureau of Statistics attributes this increase substantially to the cost of perishable foods such as fruit (+15.4%), vegetables (+5.6%), beef and veal (+5.5%) and cheese (+7.2%). Over the twelve month period the cost of food rose by 7.5%⁶. The increase in take-away and fast foods rose 1.3%.

⁶ Consumer Price Index, ABS 6401.0, January 2002

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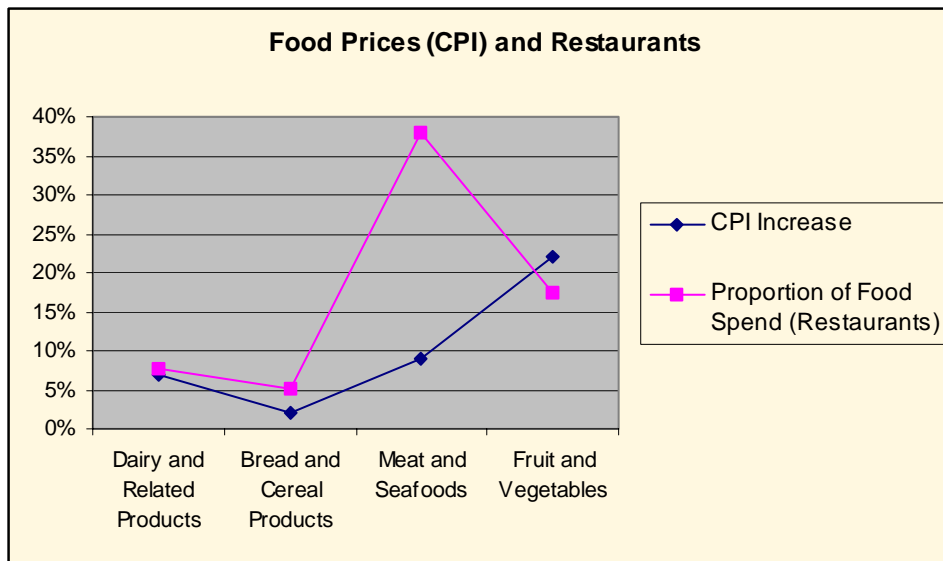


Figure 4 – ABS CPI, December 2001

Over the same period the weighted average CPI change of the 8 capital cities, for restaurant meals was of 0.0. Results recorded ranged from a .03 decrease in Sydney to a 0.06 increase in Adelaide.

As business consumers of the above food products, restaurants, cafes and caterers are likely to experience a somewhat similar percentage increase in prices to that experienced by consumers across the board. The bottom line impact of this 7.5% increase in the cost of food would be to decrease the average net profit by 2.2%. The average profit before tax for a restaurant / caterer was 4.8%⁷ in 1998/99.

As detailed in previous sections, in the 12 months to December 2001, restaurant and cafe turnover was \$9.3 billion, an 8.7% increase on the year previous. In the last twelve months this increase has not been matched by any increase in profits. In fact, what is a positive revenue picture is a

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negative profit picture with the average net profit, in percentage terms, estimated (as substantiated above) to have reduced from 4.8% to less than 1.5%.

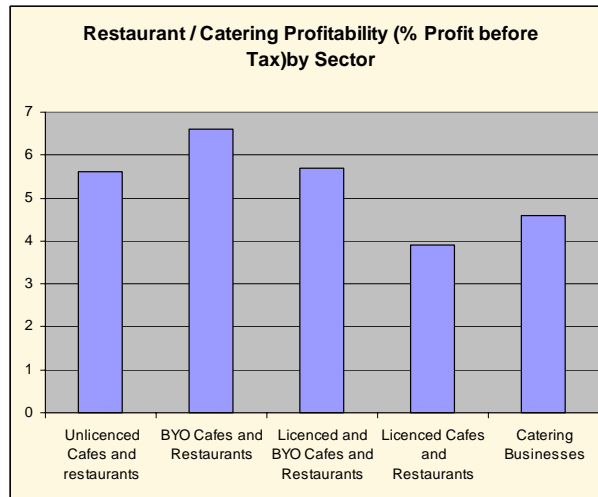


Figure 5 - ABS Restaurant and Café Industry, October 2000

In dollar terms the growth noted above, in turnover, has in fact been exceeded by the growth in the numbers of businesses. Whilst relative numbers of businesses are difficult to track, due to a change in methodology of ABS business register counts, business numbers (for GST registrations) from the ATO means that the average turnover of a restaurant / caterer in 2001, was \$314,000. This is significantly less than average turnover previously

On the basis of the calculations above, this provides an average net profit less than \$ 4,720.00.

Whilst the Australian economy is widely tipped to maintain growth in the coming year, it is unlikely that conditions for restaurants will change.

⁷ Café and Restaurant Industry, ABS 8655.0, 2000

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Some fixed costs will increase marginally (eg. Rental, Advertising, Administration costs), some fixed costs will rise dramatically (eg. Insurance) and significant variable costs will rise disproportionately (as detailed earlier such as food and labour costs.)

Extremely low profit levels will prevail.

Conclusion

The facts are that restaurant turnover is increasing but this increase, whilst significant, is slower than the growth in business numbers⁸. This has meant that the average restaurant has experienced less and NOT more turnover and that profitability also has been compromised. Selling prices in 2001 were static and input costs, in the two most significant cost categories (the cost of food and labour cost) increased significantly (7.5% and 6% respectively⁹). At already low levels of profit before tax (4.8% in 1998), the industry was, at the end of 2001, in dire straights and is in no position to absorb a further increase in wage rates.

Restaurant & Catering Australia contends that any increase granted to the safety net should only be applied proportionally to the restaurant and catering industry, for the reasons noted above. It is understood that other parties will argue that any increase in the safety net should be to minimum wage levels only and should be in the order of \$10. Further, it is understood that part of the justification for this reasonable increase is that any greater increase would certainly have inflationary impacts. Restaurant & Catering Australia would argue that the impact of such an increase would be

⁸ Source, ATO and ABS

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proportionally enhanced in this industry and that, as the outcome of the last estimated 3% increase was 6% in this industry, that only 50% of the increase should be applied to restaurateurs and caterers.

Before finishing this submission to the Living Wage Case 2002, I would like to refer to Section 3 in part of the *Workplace Relations Act 1996* - Principal Object of this Act -

" The principal object of this act is to provide a framework for co-operative workplace relations which promotes the economic prosperity and welfare of Australian by;

(a) encouraging the pursuit of high employment, improved living standards, low inflation and international competitiveness through higher productivity and a flexible and fair labour market: and

(d) providing the means:

(ii) to ensure the maintenance of an effective award safety net of fair and enforceable minimum wages and conditions of employment, "

The wage increase being sought by the applicant unions will not lead to furthering the objects of the *Workplace Relations Act 1996*, in that an increase of the nature being sought, the Association truly believes, will lead to further staff reductions by small business owners. The unions seem to deny this has been happening, but it is. The unions only seem to concern themselves with this issue when a purpose arises to highlight the fact.

Restaurant and Catering Australia do support the objects of the *Workplace Relations Act 1996* and in particular the maintenance of an effective award safety net. However, in this case the claim being sought by the unions is excessive. Consideration should be given by this Full Bench to the proposal of Restaurant and Catering Australia to a proportional increase of 50% of that to be awarded by this Commission for application the Restaurant and Industry for reasons stated here today.

IF THE COMMISSION PLEASES.

⁹ Source ABS CPI and Average Weekly Earnings Data