



Restaurant
& Catering

IN THE FAIR WORK COMMISSION

FOUR YEARLY REVIEW OF MODERN AWARDS

PENALTY RATES CASE - MATTER NO.: AM2014/305

SUBMISSIONS ON STATISTICAL REPORTS

21 OCTOBER 2016

1. These submissions are made in response to the Fair Work Commission's statement dated 28 September 2016.
2. Restaurant & Catering Industrial (RCI) rely on its previous submissions filed in these proceedings, in particular, its Final Submissions filed on 11 March 2016, and its Submissions in Reply filed on 5 April 2016.

Changing Work Patterns, Fair Work Commission Workplace and Economic Research Section, September 2016 ('CWP Report')

3. Restaurant & Catering Industrial notes the Changing Work Patterns report from the Fair Work Commission Workplace and Economic Research Section, dated September 2016, and makes the following observations:
 - a) RCI draws the Commission's attention to the comment in the CWP Report and the conclusion that 'Employed persons in these industries (Accommodation and Foodservices) were more likely to prefer working more hours, taking into account how it would affect income'. In response to this, RCI refers to its final submissions, which indicated that 60,000 more hours of work would be created, each Sunday, by a change to the Sunday penalty matching the Saturday penalty.¹
 - b) The comments made in the body of the CWP Report and in the conclusion, that 'almost half of those surveyed never attended religious services', and the finding that 71.4%² of people in 2014, attended religious service once a year or less supports the statements from RCI, in closing submissions³ that disruption to religious practice on Sunday no longer provides a distinction in terms of disability between working on a Sunday over Saturday.

¹ RCI Final Submissions in AM 2014/305 at 53(d)

² This figure is the total sum of figures in Table 4.2 of the CWP Report: 49.5 (Never), 12.4 (Less than once a year), and 9.5 (About once a year) p. 24.

³ RCI Submissions in Reply to AM2104/305 at 26.

Industry profile – Accommodation and food services (‘Industry Profile Report’)

4. RCI does not recommend the use of aggregated figures in the Industry Profile Report as a reflection of industry performance in the café and restaurant sector. Industry data presented below drawn from the Australian Bureau of Statistics (ABS) and Productivity Commission highlights the disparities between the industry averages of restaurant, café and takeaway operators compared to aggregate accommodation and food services data prepared by the Commission. RCI submits that the aggregated data in the Industry Profile Report does not provide an accurate representation of industry size, structure and performance in the restaurant and catering industry.

5. RCI is not questioning the calculation of the averages for the sector, rather it has concerns regarding the misleading nature of the data when attempting to apply the average to the sub-sectors. For example, to base assumptions, for the restaurant industry, on the aggregate 80% of businesses open 7 days (Table 4.4)⁴, when this figure is likely made up of 100% for accommodation and 60% for restaurants, provides a misleading view of both sub-sectors’ situation.

INDUSTRY OVERVIEW

6. RCI believes the tables presented in section 3 of the Industry Profile Report does not reflect the size of employment in the restaurant, café and takeaway sector and reliance on the *Restaurant Industry Award 2010*. Table 3.1. indicates that employment in the accommodation and food services sector totals 838,000.⁵ This aggregated figure does not reflect that café, restaurants and takeaway businesses employ 566,800 staff as reported by the *Department of Employment Industry Projections*.⁶ The Department of Employment

⁴ CWP Report, p.16.

⁵ Ibid, p.4.

⁶ Australian Government Department of Employment: Industry Employment Projections 2016 Report (Release date: March 2016).

figures indicate cafes and restaurants employ 68.7 per cent of accommodation and food services staff.

7. Table 3.2⁷ indicates only 17.8 per cent of accommodation and food services employees are covered by the *Restaurant Industry Award 2010*. Yet analysis of the below composition of employment in the café, restaurant and takeaway sector indicates these establishments employ 68.7 per cent of all accommodation and food services staff. The discrepancy in the number of staff employed and reliance on the award calls into question the validity of aggregated data presented in section 3 of the Industry Profile Report.

Employment growth projections

8. The café, restaurant and takeaway sector is expected to experience the highest rate of employment growth of all hospitality categories across the accommodation and food services industries. Employment growth in the accommodation and food services sector has increased 51.7 per cent over the past 20 years (equating to 263,100 new jobs), compared to 46.0 per cent for employment as a whole, driven by strong growth in the café, restaurant and takeaway sector.⁸ Five-year employment growth in this sector was higher than any other hospitality cohort, growing at 12.2 per cent or 57,600 jobs to 2014.⁹
9. Further, the Department of Employment indicates that employment in the cafe, restaurant and takeaway services sector has a projected five-year employment growth rate of 14.9 per cent, requiring an additional 84,300 workers by November 2020.¹⁰ This is a considerable revision from the 8.9 per cent growth rate or 43,900 jobs projected in 2014, and considerably different from the employment prospects of the accommodation industry which is expected to grow at only 5.3 per cent. This calls into question Table 3.2 of the

⁷ Ibid, p.5.

⁸ Department of Employment (2014) *Industry Outlook: Accommodation and Food Services*, December 2014.

⁹ Australian Government Productivity Commission: *Workplace Relations Framework Draft Report*, August 2015, p.519.

¹⁰ Department of Employment (2016) *2016 Employment Projections, Industry projections to November 2020*.

Industry Profile Report, as it does not provide an accurate reflection of likely Award reliance in the future.

INDUSTRY STRUCTURE AND PERFORMANCE

10. RCI believes that the aggregated figures presented in Table 4.2 are misleading, if it is taken to provide an indication of the state of the restaurant and catering industry, due to the disparity between the average business size for café and restaurant businesses, compared to the aggregated figure for accommodation and food service businesses presented in Table 4.2.¹¹

11. Table 4.2¹² indicates that a majority of businesses in the accommodation and food services sector are small businesses (64.5 per cent), followed by 27.1 per cent that are non-employing businesses. However, the data from the *ABS 81650 Counts of Australian Businesses, including Entries and Exits, Jun 2011 to Jun 2015* indicates that 73.1 per cent of café and restaurant businesses are small businesses (1-19 employees), while only 19.2 per cent are non-employing businesses.

12. Further, the survival rate of café and restaurant businesses (determined by the difference in entries and exits in a year) as detailed in Table 4.7¹³, and confirmed above in Table 2, indicate the survival rate for the café and restaurant sector is higher than any other category at 4.8 per cent. It is also higher than the average survival rate of all accommodation and food service businesses at 0.7 per cent as indicated in Table 4.7 per cent.¹⁴

¹¹ Industry Profile Report, p.8.

¹² Ibid.

¹³ Ibid, p.20.

¹⁴ Ibid.

Enterprise characteristics

13. The figures presented in Table 4.4 which stipulates 80.5 per cent of accommodation and food service businesses are operating 7 days, in aggregate, also provide a misleading picture if taken to demonstrate the nature of the restaurant industry. Data presented in the *Productivity Commission's Draft Report into the Workplace Relations Framework* indicates only 63.8 per cent of restaurant businesses in Melbourne are open all week, while only 49.2 per cent of restaurants in Sydney are open all week¹⁵. The proportion of restaurant businesses open in regional centres such as Canberra is even lower, with only 48.0 per cent of restaurants in Canberra open all week.¹⁶
14. RCI believes that the average sector data, in table 4.4, demonstrates an average between 100% opening for accommodation businesses and close to 60% for the restaurant sector. The 60% represents the operating reality of café and restaurant operators that are likely to close on Mondays or experience significantly lower trade earlier in the week. This is supported by the *Dimmi Australian Dining Index 2013 & 2014* which indicates the busiest times for operators are Friday and Saturday, with minimal business on Mondays.¹⁷
15. In addition, R&CA's 2016 Industry Benchmarking Report found that there was a decrease in the number of businesses choosing to operate on Sundays but not Public Holidays. There was also a decline in the number of businesses that open some Sundays and Public Holidays.
16. Further, Table 4.4 indicates 86.5 per cent of accommodation and food service businesses operate only one establishment. According to R&CA's 2016 Industry Benchmarking Report, only 66.2 per cent of cafes and restaurants operate one business, while 21.9 per cent own and operate 2-3 businesses, with a further 7.1 per cent indicating they own 4-5

¹⁵ Australian Government Productivity Commission: Workplace Relations Framework Draft Report, August 2015, p 519

¹⁶ Ibid.

¹⁷ Dimmi Australian Dining Index 2013 -2014, <https://www.dimmi.com.au/infographics/dining-index-2014>, (accessed 20 October 2016).

establishments. Approximately 5 per cent of respondents operate more than five establishments. This is in contrast to the data presented in the *Industry profile - Accommodation and food services* report that indicates 11.0 per cent of accommodation and food service businesses operate 2-5 businesses, and 0.7 per cent operate between 6 to 10 establishments.

17. In addition, Table 4.4 indicates 44.5 per cent of accommodation and food service businesses operate in regional/rural areas, with 55.5 per cent operating in metropolitan areas. R&CA's 2016 Industry Benchmarking Report found that restaurants located in the suburbs represent 35.4 per cent of businesses, with restaurants in a regional area or country town representing 21.9 per cent of businesses, followed by operators located in a capital city CBD (21.1 per cent). A further 15.4 per cent of restaurant and cafe businesses operate in a tourist area. This is, once again, a function of the aggregate average providing a false view of the performance in the sub-sector industries.

Wages and salaries

18. RCI believes the aggregated wage and salaries percentage of approximately 27 per cent reflected in Figure 4.1 in the Industry Profile Report are misleading for restaurants, due to the disparity between the likely restaurant and accommodation sector data. R&CA's 2016 *Industry Benchmarking Report* found that wages and salaries represented 37.9 per cent of total business expenses for the 2014-15 financial year. In contrast in the accommodation sector the result is likely to be closer to 20% further demonstrating the false view of the performance the aggregate provides of the sub-sector industries.

Productivity

19. RCI believes the aggregated data used in Figure 4.6¹⁸ does not accurately reflect the multifactor productivity of restaurants and cafes. This section of the Industry Profile Report indicates that between 2007-08 and 2014-15 that multifactor productivity in the Accommodation and food service industries was higher than the market sector (<0.5 per cent).

Data released by Professor Peter Forsyth from Monash University¹⁹ indicates between 1997-98 to 2003-04, tourism productivity growth, at 1.0%, was lower than the whole of the economy at 1.4%, and from 2003-04 to 2008-09, tourism productivity fell by 0.8%, while it fell by 0.7% for the overall economy. The report suggests that the accommodation sector experience positive productivity growth, while the food services sector experienced a decline of 1.4 per cent in multifactor productivity.

Composition of Employment

20. Table 5.1 outlines the composition of employed persons by industry group. There is a distinct difference in the composition of part-time and full-time positions between the accommodation sector and the café, restaurant and takeaway services sector. Approximately 54 per cent of workers in the accommodation sector are full time employees, compared to only 37 per cent in cafes and restaurants. Further, 46 per cent of accommodation staff are part-time employees, compared to 63 per cent in cafes and restaurants. The aggregated numbers therefore for the accommodation and food services sector show a higher proportion of full time employees (41.0 per cent) than the actual average for the café, restaurant and takeaway sector (37.3 per cent).

¹⁸ Industry Profile Report, p.18.

¹⁹ Forsyth, P. *What is happening to tourism industry productivity?* Monash University, n.d.