

Restaurant  
& Catering

**FAIR WORK COMMISSION  
2014 ANNUAL WAGE REVIEW  
BUDGET REPLY SUBMISSION**

**16 MAY 2014**

ABN: 73 080 269 905  
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**Table of Contents**

Reply to Commonwealth Budget 2014-15..... 3

Reply to questions from FWC Minimum  
Wage Panel..... 4

Conclusion ..... 16

## Commonwealth Budget 2014-15

- 1) Restaurant & Catering Australia provides the following submission in reply to the Commonwealth Budget announced on 13 May 2014 by the Treasurer.
- 2) The Abbott Government has delivered its first budget amid softer economic conditions that will have implications for business both big and small. The budget sees a deficit of \$28.9 billion in 2014-15.
- 3) The budget forecasts moderate economic growth of 2.5 percent in 2014-15, which is expected to increase slightly to 3 percent in 2015-16. Employment growth is forecast at 1.5 percent in 2014-15.
- 4) Unemployment is expected to remain relatively unchanged at 6.25 percent in both 2014-15.
- 5) The compulsory superannuation guarantee charge is confirmed to rise to 9.5% effective from 1 July 2014 which will have a direct impact on small businesses in particular.
- 6) While support for tourism marketing and industry development programs has been maintained in the 2014-15 budget key macroeconomic announcements will have potential flow-on affects for the sector.
- 7) The re-introduction of the fuel excise from 1 August 2014, and increased taxes and charges (including the Budget Repair Levy on high income earners) will likely affect discretionary spending by consumers on domestic tourism and leisure activities.
- 8) Changes to the education and welfare system will affect the sectors access to skilled and non-skilled labour.

- 9) Restaurant & Catering Australia provides the following submission in reply to the questions posed by the Minimum Wage Panel (Panel) on 2 May 2014. It should be noted that we have only responded to questions where we have commentary for the Panel.

## Reply to Questions from the Minimum Wage Panel

### 1 Quantum of increase

*The Queensland Government and New South Wales Government recommended that the Commission take a “cautious approach” in determining the level of any adjustment in minimum wage rates.<sup>1</sup> The Australian Government also submitted that a “cautious approach”<sup>2</sup> is needed in order to support the economy through an economic transition. The Victorian Government submitted that the Panel should “exercise caution”<sup>3</sup>, while the Western Australian Government supported the Panel taking “a balanced approach to the 2013–14 Review”.<sup>4</sup>*

*Given that these submissions did not specify a quantum of increase, what is the position of these parties on what would constitute a “cautious” or “balanced” approach when considering a dollar or percentage outcome for the Annual Wage Review 2013–14?*

Restaurant & Catering Australia notes the questions by the Panel to the Australian Government, State Governments, Australian Chamber of Commerce and Industry and Australian Council of Trade Unions (ACTU) regarding the quantum of increase. Restaurant & Catering Australia supports the Australian Chamber of Commerce and Industry in its submission that the Panel take into account past increases in excess of inflation when determining the annual wage review in 2014. We also reiterate that there should be no increase to the Restaurant Industry Award, Hospitality Industry (General) Award and the Fast Food Industry Award and remind the Panel it is under no legislative requirement to award annual wage increases across all sectors of the Modern Award system.

### 2 Productivity

#### 2.1 Question to all parties

*“In its initial submission, the New South Government submitted that “labour productivity is an incomplete measure that should not be used as a guide to assess the appropriateness of minimum wage adjustments”<sup>5</sup> and “should not be used to*

<sup>1</sup> NSW Government submission at p. 29, para. 121; Queensland Government submission at p. 3, para. 3.

<sup>2</sup> Australian Government submission at p. 9, para. 3.

<sup>3</sup> Victorian Government submission at p. 5, para. 20.

<sup>4</sup> Government of Western Australia submission at p. 1, para. 6.

<sup>5</sup> New South Wales Government submission at p. 27, para. 113.

*guide minimum wage decisions due to its inherent volatility, and its tenuous link to actual productivity”.<sup>6</sup> In particular, the New South Wales Government submitted: “Labour productivity is largely driven by factors that are not entirely related to productivity, namely capital deepening. Two industries, mining and electricity, water and gas have undergone rapid capital deepening in the past decade and this has driven much of the growth in labour productivity over that time.”<sup>7</sup> Do other parties share this view?”*

Restaurant & Catering Australia supports the observation about labour productivity by the New South Wales Government. Indeed it supports our arguments that a two speed economy exists in Australia and the Panel should recognise this by supporting a wage freeze for the hospitality sector.

## **2.2 Question to all parties**

*The ACCI submission claims that it is highly likely that “...Australia’s recent productivity improvements have been driven by increases in mining production, as well as a tightening [sic] of the labour market... These circumstances could hardly be less supportive of more rapid wage increases.”<sup>8</sup>*

*The Australian Government submission states that on average labour productivity rose by 1.6 per cent per annum in the decade to 2013, but that it rose at well below this rate for award-reliant industries.<sup>9</sup>*

*Both these submissions imply that the sources of increase in labour productivity that might reasonably be shared with low wage workers are confined to productivity growth in the more award-reliant industries. What are the views of parties on this approach?*

Restaurant & Catering Australia supports the observation about labour productivity by the Australian Government and Australian Chamber of Commerce and Industry. Again this labour productivity finding supports our arguments that a two speed economy exists in Australia and the Panel should recognise this by applying a wage freeze for the hospitality sector.

## **2.3 Question to the Australian Government**

*The Australian Government’s submission provided that the labour share of income is “...influenced by the number of people in work”.<sup>10</sup> Could the Australian Government elaborate on this submission?*

## **2.4 Question to all parties**

*In discussing labour market conditions and the decline in work opportunities, particularly for men, Australian Business Industrial and the Australian Industry Group refer to structural change in the economy away from labour intensive industries such as construction.<sup>11</sup> However, the Statistical Report for the Annual Wage Review 2013–14 shows that employment in the construction sector has grown considerably*

<sup>6</sup> New South Wales Government submission at p. 28, para. 116.

<sup>7</sup> New South Wales Government submission at p. 28, para. 114.

<sup>8</sup> ACCI submission at p. 36.

<sup>9</sup> Australian Government submission at p. 15, para. 40.

<sup>10</sup> Australian Government submission at p. 28, para. 113.

<sup>11</sup> ABI submission at p. 2, para. 3.4; Ai Group submission at pp. 14–15.

over the last decade, including in the year to February 2014. As the construction phase of the mining boom continues to contract we may see a decline in the industry in the year(s) ahead, although an upturn in home building and infrastructure spending may cushion that decline. There is also the possibility that private sector investment will pick up but the signs there are still very tentative. Based on these trends, how should the Panel take into account structural change in the economy?

Restaurant & Catering Australia argues that the two speed economy strongly supports the Panel moving away from a one size fits all wage increase.

### 3 Business competitiveness and viability

#### 3.1 Question to Restaurant & Catering Australia (R&CA)

In its initial submission the R&CA submitted that:

*“Restaurants that have closed in the last financial year include Bistro One Eleven and Ortiga in Brisbane, L'etoile, Ad Lib and Blancharu in Sydney and Saba, Mejavos and Pearl in Melbourne. This is a disaster for business owners and consumers alike and if labour costs continue to rise thousands more will be forced to close permanently.”<sup>12</sup>*

The Panel notes a number of articles which have discussed these listed enterprises and their reasons for closure.<sup>13</sup>

*Is the R&CA submitting that the restaurant closures cited in their submission have occurred due to the level of (and/or increases in) minimum wages and other award labour costs? If so, what is the evidence in support of this submission?*

Restaurant & Catering Australia argues that labour costs is a contributing factor in the closure of many restaurants and cafes in Australia

In the limited timeframe given by the Panel, Restaurant & Catering Australia has sought to contact the various business owners that have closed restaurants and

<sup>12</sup> R&CA submission at p. 5, para. 11.

<sup>13</sup> Mirosch N, ‘One Eleven restaurant to close its doors’, *Brisbane Times*, 9 October 2013, <http://www.brisbanetimes.com.au/business/one-eleven-restaurant-to-close-its-doors-20131009-2v7ql.html#ixzz2xmczk6Ov>; and McCullough J, ‘Bistro One Eleven adds to the list of Brisbane restaurants shutting up shop’, *The Courier-Mail*, 9 October 2013, <http://www.couriermail.com.au/business/bistro-one-eleven-adds-to-the-list-of-brisbane-restaurants-shutting-up-shop/story-fnihsp3-1226735670138>; <http://www.letoilrestaurant.com.au>, viewed 14 April 2014; Lyons K, ‘You're never there': Manu admits he was forced to close Sydney restaurant L'Etoile because he was too busy with MKR commitments’, *Daily Mail (UK)*, 15 March 2014, <http://www.dailymail.co.uk/tvshowbiz/article-2581826/Manu-Feildel-closes-Sydney-restaurant-MKR-commitments.html#ixzz2xmiogW9Y>; Bowling D, ‘“Times are difficult”: Berowra Waters Inn & Ad Lib close doors’, *Hospitality Magazine*, 28 June 2012, <http://www.hospitalitymagazine.com.au/food/news/times-are-difficult-berowra-waters-inn-ad-lib-clos>; Bolles S, ‘Another blow to Sydney's dining scene’, *Good Food*, 10 March 2014, <http://www.goodfood.com.au/good-food/food-news/another-blow-to-sydneys-dining-scene-20140310-34ggn.html>; Lethlean J, ‘Pearl put on pause as owner Chris Lucas opts for Italian’. *The Australian*, May 8, 2012. <http://www.theaustralian.com.au/life/food-wine/pearl-put-on-pause-as-owner-chris-lucas-opts-for-italian/story-fncv75k9-1226349230164#mm-premium>.

correspondence is Annexed to this submission indicating that labour costs were a factor in a number of these closures.

Specifically, an open letter from Ortiga Business owner Simon Hill dated 9 October 2013 specifically “industrial relations changes” are cited for the restaurant closure.

Restaurant & Catering Australia also thanks former business owner of Bistro One Eleven Mr Philip Johnson who has been prepared to send a statement via email confirming labour costs were a factor in the closure of his restaurant (attached). Indeed in the Courier Mail article cited by the Panel by Journalist J McCullough sums it up precisely with:

*“A perfect storm of payroll tax, penalty wages, and skyrocketing rents, along with parking costs and a severe cutback in corporate entertainment has inner city restaurants facing hard times.”*

### **3.2 Question to Australian Retailers Association (ARA)**

### **3.3 Question to all parties**

*Submissions on behalf of retail employers draw attention to subdued growth in retail prices.<sup>14</sup> What information is available which sheds light on the cause of lesser growth in retail prices and the extent to which product cost to retailers is relevant?*

### **3.4 Question to all parties**

*Citing Dissolve—Business Stress Report March 2014, which we understand to be published by the insolvency practitioner Dissolve Pty Ltd, the R&CA submit that “[c]ompany insolvencies were the highest on record in calendar year 2013 as illustrated in the table below with 10,821 businesses placed into external administration”.<sup>15</sup>*

*Are the Dissolve figures based on data from the Australian Securities and Investment Commission (ASIC)?<sup>16</sup> Is a higher absolute number of insolvencies to be expected as the absolute number of business registrations rises? Is the ratio of companies entering external administration (EXAD) relative to new incorporations in 2013 at a low level compared with the long term trend of 6 per cent, used by ASIC?*

Restaurant & Catering Australia understands that Dissolve Pty Ltd publishes data on its website that is derived from the Australian Securities and Investment Commission (ASIC) statistics.

<sup>14</sup> For example, ANRA submission at p. 7, para. 2.5.

<sup>15</sup> R&CA submission at p. 4, para. 7.

<sup>16</sup> ASIC, *Insolvency statistics summary*, December quarter 2013.

Dissolve also publishes rolling calendar year data which is different to the financial year data published by ASIC. The following table shows the extracted quarterly figures from ASIC that show the disturbing trend in corporate insolvencies.

| Quarter        | Corporate Insolvencies |
|----------------|------------------------|
| March 2013     | 2506                   |
| June 2013      | 2815                   |
| September 2013 | 2948                   |
| December 2013  | 2552                   |
| Total          | 10,821                 |

Restaurant & Catering Australia does not believe a higher number of insolvencies has been recorded in the last few years because of the rise in new business registrations including Self Managed Superannuation Funds. It is arguable that if the increased number of business registrations is due to SMSF's then this highlights a higher number of business failures of existing trading corporations because SMSF's would not necessarily increase the number of insolvencies as they are normally asset based investments which do not regularly become insolvent.

### 3.5 Question to Australian National Retail Association (ANRA), National Retail Association (NRA) and Australian Retailers Association (ARA)

*Submissions by retail associations refer to the household savings ratio, which at approximately 10 per cent is said to be "more than double the average rate experienced over the prior 10 years".<sup>17</sup> In the Annual Wage Review 2012–13 Decision, the Panel concluded:*

*As noted by RBA Governor Glenn Stevens, and cited in the 2011–12 Review decision, to the extent that there is an historical norm in respect of the household saving ratio, it is much more likely to be 10 per cent or more rather than the zero level it reached in 2004, and spending is growing in line with income. Indeed, the exceptionally low household saving ratio of the mid 2000s was abnormal.<sup>18</sup>*

*Is that conclusion of the Panel disputed and what implications does it have for consideration of the current household savings ratio of approximately 10 per cent?*

### 3.6 Question to all parties

*In its initial submission, R&CA stated that:*

*"Restaurateurs and small business entrepreneurs will continue to relocate to foreign countries rather than Australia if labour costs continue to remain excessively high. For example, Curtis Stone found it easier to set up a restaurant*

<sup>17</sup> NRA submission at p. 6, para. 15.

<sup>18</sup> [2013] FWCFB 4000 at p. 46, para. 191.

in Los Angeles where labour costs and taxes are less of a burden on profits and commercial viability.”<sup>19</sup>

In its reply submission, R&CA responded to a question posed by the Panel and stated:

“Restaurant & Catering Australia cites operators that have relocated to Bali where labour costs are significantly lower including Tetsuya Wakuda, Café Brunetti, Charlie & Co. in Singapore, Robert Marchetti in Bali, Matthew Yazbek (Toko) in Bali, China and Dubai.”<sup>20</sup>

The Panel notes a number of articles referring to businesses that have closed in Australia and opened overseas.<sup>21</sup>

Is there any evidence that labour costs in Australia played a role in the decision of any of the restaurateurs cited by R&CA to open a restaurant overseas?

Restaurant & Catering Australia has been unable to statistics or data that expressly records labour costs as the reason for relocating overseas.

The following table illustrates ANSCO groups that permanently depart Australia. It appears to us that restaurant business owners would most likely be captured in the Not in Labour Force figures.

### Permanent Departures by Major ANZSCO Group and State of Residence - Financial Year 2012-13

| Major ANZSCO Group                     | NSW           | Vic.          | Qld           | SA          | WA            | Tas.       | NT         | ACT         | Australia <sup>(b)</sup> |
|--|---------------|---------------|---------------|-------------|---------------|------------|------------|-------------|--------------------------|
| Managers                               | 4964          | 2867          | 2279          | 478         | 1325          | 93         | 59         | 160         | 12 227                   |
| Professionals                          | 9488          | 5633          | 4390          | 1079        | 2912          | 247        | 115        | 408         | 24 272                   |
| Technicians and Trades Workers         | 1517          | 828           | 1116          | 183         | 790           | 45         | 38         | 48          | 4566                     |
| Community and Personal Service Workers | 1196          | 707           | 871           | 181         | 494           | 53         | 35         | 71          | 3609                     |
| Clerical and Administrative Workers    | 1517          | 769           | 700           | 144         | 402           | 25         | 16         | 130         | 3703                     |
| Sales Workers                          | 1129          | 559           | 514           | 81          | 228           | 15         | 18         | 32          | 2577                     |
| Machinery Operators and Drivers        | 341           | 160           | 281           | 33          | 255           | 11         | 10         | <5          | 1095                     |
| Labourers                              | 445           | 235           | 317           | 59          | 185           | 14         | 10         | 15          | 1280                     |
| Inadequately Described                 | 1680          | 892           | 888           | 174         | 632           | 33         | 27         | 79          | 4405                     |
| <b>Not in Labour Force</b>             | <b>11 778</b> | <b>6148</b>   | <b>6332</b>   | <b>1140</b> | <b>4212</b>   | <b>294</b> | <b>179</b> | <b>473</b>  | <b>30 557</b>            |
| Not in Employment                      | 286           | 158           | 180           | 35          | 97            | 7          | <5         | 10          | 775                      |
| Not Stated                             | 1237          | 542           | 501           | 72          | 252           | 14         | 20         | 57          | 2695                     |
| <b>Total</b>                           | <b>35 578</b> | <b>19 498</b> | <b>18 369</b> | <b>3659</b> | <b>11 784</b> | <b>851</b> | <b>530</b> | <b>1485</b> | <b>91 761</b>            |

<sup>19</sup> R&CA submission at p. 6, para. 16.

<sup>20</sup> R&CA submission in reply at p. 8, para. 16.

<sup>21</sup> Hallock B, ‘First look at Curtis Stone’s Maude restaurant in Beverly Hills’, *Los Angeles Times*, 10 January 2014,

<http://www.latimes.com/food/dailydish/la-dd-curtis-stone-maude-beverly-hills-20140109,0,1041667.story#axzz2z1n1K8IP>; <http://www.curtisstone.com/restaurant>, viewed 14 April 2014;

<http://www.mauderestaurant.com/about.html>, viewed 14 April 2014; Bennet S, ‘It’s easier to get a table at Tetsuya’s, but now you’ll need your passport’, *The Sydney Morning Herald*, 7 March 2011,

<http://www.smh.com.au/entertainment/restaurants-and-bars/its-easier-to-get-a-table-at-tetsuyas-but-now-youll-need-your-passport-20110306-1bjjs.html>; <http://brunetti.com.au/about/>, viewed 14 April 2014;

<http://www.toko-sydney.com/>, viewed 14 April 2014; Varidel, R, ‘Robert Marchetti set to take on Bali’, *InsideCuisine*, 30 January 2013, <http://insidecuisine.com/2013/01/30/robert-marchetti-set-to-take-on-bali/>.

### 3.7 Question to ACCI

ACCI submitted 2011 Census of Population and Housing data on the earnings distribution of employees and employers of 1–19 staff that work full-time in key award-reliant industries.<sup>22</sup> Could ACCI provide an explanation of the Census data and the source document from which it is drawn? Are the earnings shown in the ACCI tables derived from question 33 of the 2011 Census which asked, “What is the total of all wages/salaries, government benefits, pensions, allowances and other income the person usually receives?”<sup>23</sup>

### 3.8 Question to all parties

Several employer groups warned that increasing labour costs, particularly in Retail trade, will have an adverse impact on the viability of businesses and put employment at risk.<sup>24</sup> However, foreign investment in Retail trade has continued to increase over each year. Parties are invited to comment on the reasons for why foreign companies are continuing to invest in Retail trade in Australia?

Restaurant & Catering Australia notes the comments made by Retail Executive Mr Mark McInnes in the Sydney Morning Herald on 2 May 2014 stating:

*“Mr McInnes said Australia had the highest minimum wage in the world and an award system that promised CPI-linked wage increases regardless of performance and the strength of the company or wider economy.*

*He said Australian retail workers earned 40 per cent more per hour than their UK counterparts. The UK also didn't have penalty rates on the weekend.*

*“In a world where your mobile phone is the country border this differentiation is not sustainable and must change.”<sup>25</sup>*

### 3.9 Question to all parties

The Australian Workplace Innovation & Social Research Centre (WISeR) commissioned a study by the National Institute of Economic and Industry Research (NIEIR) to assess the impact of the closure of the motor vehicle industry in Australia following announcements by General Motors Holden (GMH), Ford and Toyota that they will be ceasing production in the country. The report concludes that:

*“The effects of the announced motor vehicle industry closures in Australia have already begun to be felt throughout the sector. Projections of the likely impact up until 2017, around the time production will cease in Australia, as modelled by the National Institute of Economic and Industry Research, demonstrate the significance the closures will have on both employment levels as well as on Gross Domestic Product. Close to 200,000 jobs are forecast to be lost as a direct impact of the facilities closure, with a fall in GDP of \$29 billion or more, with*

<sup>22</sup> ACCI submission at pp. 43–46.

<sup>23</sup> ABS, *How Australia Takes a Census, 2011*, Catalogue No. 2903.0, 2011 Household Form.

<sup>24</sup> ANRA submission at p. 7, paras 2.5–2.6; ARA submission at p. 7; MGA submission at p. 10, para. 7.4; NRA submission at p. 5, para. 14; p. 6, paras 15–17.

<sup>25</sup> <http://www.smh.com.au/business/retail/retail-boss-mark-mcinnes-blasts-labor-slams-high-wages-20140502-37mi4.html#ixzz31qoVK4oK>

Victoria, New South Wales, Queensland and South Australia estimated to bear the greatest brunt.”<sup>26</sup>

Do parties have any views on the report or any of the key findings?

The report can be accessed at:

<http://www.adelaide.edu.au/wiser/research/development/automotive%20industry/>

## 4 Relative living standards and needs of the low paid

### 4.1 Question to all parties

*In its initial submission, ACCER submit that the Wage Price Index (WPI) is not “an appropriate benchmark for the setting of wages” as the WPI “is designed to measure “pure price” changes in the costs of labour in work positions that are unchanged over time”.<sup>27</sup> Further ACCER submitted that:*

*“The WPI is not concerned with award classifications, for which rates of pay are set by the FWC. Those classifications are typically broad-banded classifications that are designed to encompass a broad range of skills and responsibilities, unlike the narrowly-defined classifications of the award system prior to the 1990s. Work value changes, increases in productivity and re-designed positions are encompassed within the award classifications. To use pure price changes as measured by the WPI is inconsistent with the setting of wages for work classifications that are generally undergoing constant change. The WPI reflects the static, and not the dynamic aspects of a firm's operations and the work being performed by workers within the scope of broad-banded wage classifications. To set wages by reference to the WPI devalues the work being performed in a changing workplace and fails to properly value it.”<sup>28</sup>*

*ACCER also notes that the WPI “is partly determined by the FWC; and past wage decisions are reflected in the WPI to some extent. Extracting that part of the WPI index which is the product of safety net decisions would give a higher figure for those who are not safety net workers.”<sup>29</sup>*

*What are the views of parties on ACCER's position?*

The role of the Panel in conducting the Annual Wage Review is not to consider work value changes for Modern Award classifications and therefore the ACCER notion that the Panel sets wages to the WPI is incorrect.

### 4.2 Question to the Australian Government

*The Australian Government's initial submission provides two definitions of low paid. The first is “less than two thirds of median hourly earnings (including junior rates)”,<sup>30</sup> as measured by the ABS EEH 2012 data. This gives a figure of \$17.35 per hour. The second defines low pay as equal to or less than two thirds of median hourly earnings in main job, using HILDA data for 2012. Separate low pay thresholds are set for juniors using ratios to the adult rate that are based on the relevant junior minimum wage rates. This gives a figure of \$17.60 for adults. Both the Australian Government figures are lower than the more usual measure of two thirds of median*

<sup>26</sup> Barbaro B, Spoehr J and NIEIR (2014), *Closing the Motor Vehicle Industry: The impact on Australia*, Adelaide: Australian Workplace Innovation and Social Research Centre (WISeR) & the National Institute of Economic & Industry Research (NIEIR), The University of Adelaide, p. 14.

<sup>27</sup> ACCER submission at pp. 16–17, para. 59.

<sup>28</sup> ACCER submission at p. 17, para. 60.

<sup>29</sup> ACCER submission at p. 17, para. 61.

<sup>30</sup> Australian Government submission at p. 27, fn. 36.

adult ordinary time earnings (\$18.60 in May 2012, as calculated by the ACTU from the ABS EEH data<sup>31</sup>), or between \$19 (on the assumption of a 40 hour week) and \$20 (on the assumption of a 38 hour week), based on the median earnings data contained in Table 8.1 of the Statistical Report for the Annual Wage Review 2013–14. The Australian Government then finds that 42 per cent of low paid employees are aged under 25.

We would be assisted if the Australian Government could re-estimate the proportion of low paid employees who are aged under 25, using a figure such as \$19 per hour.

#### 4.3 Question to the Australian Government

The Australian Government's initial submission urges the Panel to "...have regard to the role of wage flexibility during this period of economic transition".<sup>32</sup> Could the Government inform the Panel if it has in mind any particular forms of wage flexibility, other than "wages growth below trend"?

#### 4.4 Question to all parties

The ACTU's initial submission states that:

*"in Accommodation and food services, the most award reliant industry, real average fulltime wages (AWOTE) rose by an average of 1.5% a year over the decade to November 2013. Over the same period, the NMW rose by an average of 0.5% (in real terms)."*<sup>33</sup>

Does any party dispute these figures?

Given that 45 per cent of employees in this industry were paid at award rates in 2012,<sup>34</sup> which wages are rising relatively fast in this industry?

Restaurant and Catering Australia makes a number of observations in respect to the ACTU AWOTE figures for the Accommodation and Food Services Sector.

Firstly, the Accommodation and Food Services Sector includes large hotel businesses with gaming revenue and often results are variable when this sub sector is removed and data is obtained that relates to restaurant and café businesses only. In some sub sectors within the accommodation and food services sector it is possible that wages are rising fast because some operators may be in fact increasing over award payments to staff but reducing overall headcount as a way of maintaining profit margins.

<sup>31</sup> ACTU submission at p. 47, para. 168.

<sup>32</sup> Australian Government submission at p. 31, para. 126.

<sup>33</sup> ACTU submission at p. 5, para. 27.

<sup>34</sup> Fair Work Commission, *Statistical Report—Annual Wage Review 2013–14*, p. 25, Table 7.2.

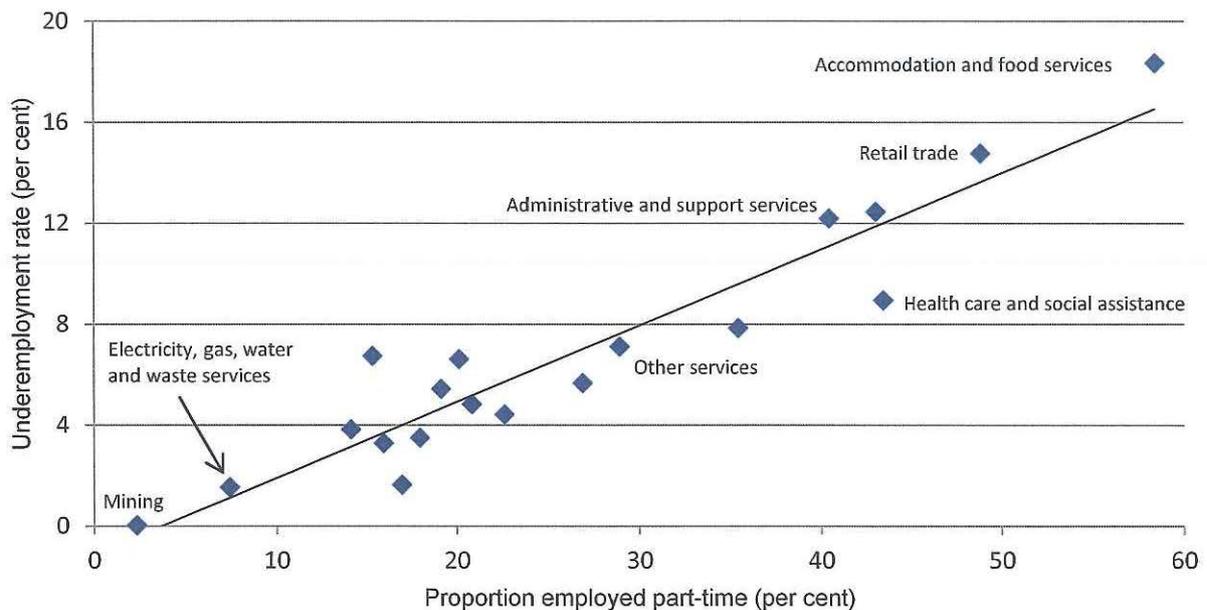
## 5 Underemployment

### 5.1 Question to all parties

Some submissions note that the rate of underemployment is highest in the most award-reliant industries.<sup>35</sup> Why is underemployment relatively high in the Accommodation and food services, Retail trade, Administrative and support services and Arts and recreational services industries?

In the Annual Wage Review 2013–14 Decision, the Panel concluded that industries with a “higher proportion of part-time employment are more likely to have higher rates of underemployment” and supported this with the chart provided below.<sup>36</sup>

**Figure 2: Underemployment rate and the proportion of part-time employment by industry, February quarter 2013**



Note: All data are in original terms.

Source: [2013] FWCFB 4000 at para. 256; ABS, *Labour Force, Australia, Detailed, Quarterly, Feb 2013*, Catalogue No. 6291.0.55.003.

Parties are invited to comment on the discussion of underemployment in the Annual Wage Review 2012–13 Decision at paras 253–257. The decision can be accessed at the following link: <https://www.fwc.gov.au/awards-and-agreements/minimum-wages-conditions/annual-wage-reviews/annual-wage-review-2012-13-0>

Restaurant & Catering Australia maintains that underemployment in the accommodation and food services sector is primarily driven by high labour costs driven by penalty rates that apply when demand for services is the greatest i.e. weekends. Small businesses need to carefully control labour costs because in labour intensive sectors penalty rates can quickly erode profit margins on a daily basis. Many small businesses tend to use family members or owners work themselves on weekends which deprive staff working hours and hence underemployment. It is a lose- lose situation all round.

<sup>35</sup> ACCI submission at pp. 5, 17, 25–27; AFEI submission at p. 30, para. 94.

<sup>36</sup> [2013] FWCFB 4000 at para. 256

## 6 Labour market transitions

### 6.1 Question to the Australian Government

*The Australian Government submission provides some recent data on the number of retrenchments across the Australian labour force.<sup>37</sup> Is the Australian Government able to expand on this, to provide additional information about typical levels of retrenchment, variation by industry, trends over recent years, for example?*

### 6.2 Question to the Australian Government

*The Australian Government submission concludes, on the basis of Table 5.1, that "...many of those who enter employment for the first time or are re-entering the workforce are more likely to earn low pay".<sup>38</sup> The Australian Government is asked to expand on how it comes to this conclusion.*

## 7 Collective bargaining

### 7.1 Question to all parties (in particular the Australian Government)

*The Australian Government submission refers to data from the Survey of Employee Earnings and Hours (EEH) and states that:*

*"Between 2010 and 2012 there was a shift away from collective bargaining towards awards – as measured by the proportion of employees who had their pay set by collective agreements and awards respectively (ABS 2013c). This was the first increase in the proportion of employees who were award-reliant during the 12 years that the ABS Employee Earnings and Hours data has been regularly collected. This recent increase in award-reliance has coincided with the period where the Commission increased all award wages by a percentage of the NMW, rather than a dollar amount.*

*The Panel may wish to consider whether there is a correlation between an increase in award rates (beyond providing a safety net [The Government estimates that 17.8 per cent of award-reliant employees are in fact paid above the median wage (ABS 2013c - Non-managerial employees only)] and a greater proportion of workers who are award-reliant and therefore are not bargaining."<sup>39</sup>*

*Does the Australian Government have any evidence that minimum wage adjustments were the causal factor for this shift in the data?*

*What are the views of parties on the Australian Government's proposition? Are there other factors which may have caused this shift?*

### 7.2 Question to the Australian Government

*The Australian Government's initial submission draws attention to spillovers, "...where minimum wage increases given to low paid workers are passed through to higher wage earners in order to maintain relativities between rates of pay".<sup>40</sup> It states that "[t]his reduces the redistributive effectiveness of minimum wages."<sup>41</sup>*

<sup>37</sup> Australian Government at p. 38, para. 174.

<sup>38</sup> Australian Government at p. 49, paras 221–222.

<sup>39</sup> Australian Government submission at p. 18, paras 64–65.

<sup>40</sup> Australian Government submission at pp. 27–28, para. 107.

<sup>41</sup> Australian Government submission at pp. 27–28, para. 107.

*In drawing this conclusion, could the Australian Government advise the Panel on what assumptions it made about the movements in “higher wages” that would have occurred in the absence of a rise in minimum wages?*

## 8 Industry specific exemptions

### 8.1 Question to Chamber of Commerce and Industry Queensland (CCIQ)

*In its initial submission, CCIQ notes drought conditions in parts of Queensland and that a Drought Relief Assistance Scheme can be accessed by primary producers in 33 drought declared Local Government Areas, but submits that there is a strong case to exempt Queensland agriculture businesses and businesses in the agriculture supply chain from any increase in the Annual Wage Review 2013–14.<sup>42</sup> What mechanism is suggested to identify affected agriculture businesses and/or businesses in the agriculture supply chain for the purposes of such an exemption? What information is available as to the circumstances of such businesses?*

### 8.2 Question to CCIQ and National Farmers’ Federation (NFF)

*To what extent have the recent rains in parts of New South Wales and Queensland ameliorated the effects of the drought upon businesses and their employee in those regions?*

## 9 Principle of equal remuneration for work of equal or comparable value

### 9.1 Question to all parties (in particular the Australian Government)

*In its initial submission, the Australian Government submitted that it calculated the hourly gender pay gap to be 10.1 per cent as at May 2012.<sup>43</sup> The measure, it submitted, was different to the ‘more widely reported 2012 pay gap of 17.5 per cent’<sup>44</sup> and had arisen because of the different measure used for this calculation:*

*“The calculation used in this submission is based on hourly earnings rather than weekly earnings and only includes permanent, full-time, non-managerial employees. Furthermore, this calculation is based on ABS Employee Earnings and Hours data as opposed to ABS Average Weekly Earnings data.”<sup>45</sup>*

*In February 2012, the Commission published Research Report 3/2012 Award reliance and differences in earnings by gender.<sup>46</sup> This research investigated the composition of the award-reliant sector and the potential impact of an increase in award wages on the gap between female and male wages. The report also discussed different measures of the gender pay gap and their limitations in measuring the gap as it relates to award-reliant women:*

*“The most frequently quoted measure of the gender pay gap in Australia is the ratio between female and male average weekly ordinary time earnings for full-time employees. This is because the ‘full-time’ criterion removes the influence of differing working time arrangements while the ‘ordinary time’ criterion adjusts for the fact that men are much more likely to work and be paid overtime than women. Pay differentials between men and women are also commonly measured in terms of*

<sup>42</sup> CCIQ submission at pp. 28–29, paras 61–63.

<sup>43</sup> Australian Government submission at p. 17, para 58.

<sup>44</sup> Australian Government submission at p. 17, footnote 18.

<sup>45</sup> Australian Government submission at p. 17, footnote 18.

<sup>46</sup> Pointon, M., Wheatley, T., Ellis, G. and MacDermott, K. 2012, ‘Award Reliance and Differences in Earnings by Gender’, Research Report 3/2012, Fair Work Commission, Melbourne

average hourly earnings, which is another means of removing, at least in part, the differences in earnings between men and women due to differences in hours worked.

...

*It should also be noted that, even within the same survey, different datasets may be more useful for different purposes. For example, in the EEH survey, including part-time employees in the calculation of the gender pay gap captures an important area of women's employment, however this requires the use of hourly data which cannot be calculated for managerial employees. Including managerial and professional employees, as discussed in chapter 4, is important to the analysis of the gender pay gap for award-reliant employees compared with 'other' employees.<sup>47</sup>*

*Why has the Australian Government adopted the hourly measurement derived from the EEH for its submission to the Panel over other measures? Further, what are the views of parties on the Australian Government's measure for deriving the percentage of the gender pay gap? Is this the most accurate or relevant measure the Panel should have regard to?*

## 10 Other matters

### 10.1 Question to all parties

*Few submissions directly addressed the variation of piece rates, though the ACTU supported a flow on of any minimum wage increase awarded as part of this Review to piece rates.<sup>48</sup>*

*The Panel invites the parties to consider and comment on how piece rates should be considered in this Review.*

### 10.2 Question to Victorian Automobile Chamber of Commerce (VACC)

*The VACC's submission raised concern about the increase in remuneration granted to the minimum wages of adult apprentices as a result of an award modernisation Full Bench decision last year.<sup>49</sup> This submission went on to argue that adult apprentices provide little or no productive advantage over junior apprentices in the first two years of an apprenticeship.<sup>50</sup>*

*There is a general presumption in Australia's system of awards that maturity and experience increase the value of the contributions of employees. Does the VACC have any data to support its argument in relation to productivity? Is this a special factor seen only in the automotive sector or a matter which needs review more broadly?*

### 10.3 Question to all parties

*Since the Panel's Annual Wage Review 2010-11 Decision, the Panel has each year set the adult apprentice rate for award/agreement free employees at the rate of the adult National Minimum Wage.*

*The Australian Industry Group's submission has proposed that the Panel should this year not set adult apprentice rates for award/agreement free employees at a rate of*

<sup>47</sup> Pointon, M., Wheatley, T., Ellis, G. and MacDermott, K. 2012, 'Award Reliance and Differences in Earnings by Gender', Research Report 3/2012, Fair Work Commission, Melbourne, p. 7.

<sup>48</sup> ACTU submission at p. 108, para. 338.

<sup>49</sup> FWC, *Apprentices, Trainees and Juniors AM2012/18 & ors decision*, [2013] FWCFB 5411 (22 August 2013).

<sup>50</sup> VACC submission at p. 12.

*the adult National Minimum Wage but instead base this rate on the rate for adult apprentices set by the Miscellaneous Award 2010:*

*"...a different approach should be taken for award/agreement free adult apprentices in the National Minimum Wage Order 2014 given that adult apprentice wage rates were recently the subject of extensive consideration by a Full Bench of the Commission during the Modern Awards Review 2012 and adult apprentice wage rates were inserted into the Miscellaneous Award 2010 from 1 January 2014. Subclauses 9.2 and 9.3 within clause 9 (Special National Minimum Wage 4) in the National Minimum Wage Order 2013 results in the following minimum wage rate scale for award / agreement free adult apprentices:*

*Year 1 \$622.20*

*Year 2 \$622.20*

*Year 3 \$622.20*

*Year 4 \$652.05*

*The above scale does not reward apprentices for successfully completing the first and second years of their apprenticeship.*

*The following current minimum wage rates for adult apprentices, provided for in the Miscellaneous Award 2010 as a result of the Full Bench's Apprentices and Trainees decision [2013] FWCFB 5411, are more appropriate for Special National Minimum Wage 4:*

*Year 1 \$579.60*

*Year 2 \$622.20*

*Year 3 \$622.20*

*Year 4 \$652.05<sup>51</sup>*

*What are the views of parties on this proposal?*

Restaurant & Catering Australia supports the change proposed for Award/Agreement free Apprentices to be tied to the Miscellaneous Award 2010.

### **Conclusion.**

After careful consideration of the questions posed by the Panel and the Commonwealth Budget outcomes Restaurant & Catering Australia maintains that there remains sufficient grounds for a wage freeze to be applied to the Restaurant Industry Award, Hospitality Industry (General) Award and Fast Food Industry Award for the 2014/15 financial year.

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<sup>51</sup> Ai Group submission at pp.46–47.

# ANNEXURE 1

# ORTIGA



9<sup>th</sup> October, 2013

As we roll on to the end of the year we also find ourselves at the end of the initial Ortiga lease period. Pablo and I have thought endlessly about our future plans and have after much consideration decided not to renew the lease and ~~carry on with Ortiga.~~

Ortiga was a concept that was ambitious, optimistic and spared little if any expense. It achieved accolades that we could only hope for or imagine ~~and it was and still is a unique room to work and kitchen to create in.~~ It is a project that Pablo and I are immensely proud of.

It has been a long and extraordinary ride from Opening Isis in 1997 and then Ortiga in 2008 which now marks 16 years' operating in the one location.

However the last five years have seen staggering changes happen to and be forced upon our industry, most notably in Industrial Relations and these ~~changes simply can no longer be ignored.~~ We have therefore chosen to move on entirely as opposed to cost cutting and downgrading our current product into possibly a more viable future business.

Our final service will be Saturday 26th October and we both hope many of our friends and regulars will drop by either for dinner or just a final drink and to say farewell.

Simon Hill

**From:** Phillip Johnson <pmjeco@gmail.com>  
**Sent:** Friday, 16 May 2014 11:24 AM  
**To:** Greg Parkes  
**Subject:** Re: Fair Work Commission

*I Phillip Johnson, the former business owner of Bistro One Eleven has been asked by the Restaurant & Catering Association to provide a Statement about the closure of the restaurant.*

*I confirm that labour costs were a factor in the Bistro One Eleven restaurant failing. In fact labour costs and the add ons such as payroll tax are a considerable burden on restaurant operations as it is labour intensive sector.*

*I trust this sets the record straight.*

*Yours sincerely,*

*Phillip Johnson*