



The Cheesecake Shop Pty Ltd

ABN 54 059 134 431

PO Box 202, Villawood, NSW, 2163

2 Lisbon St, Fairfield East, NSW, 2165

P: 02 9723 1011 M: [REDACTED]

E: [REDACTED]

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Senate Standing Committees on Economics  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Phone: +61 2 6277 3540

Fax: +61 2 6277 5719

[economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

## Submission to the Senate Standing Committee on Economics Unlawful underpayment of employees' remuneration

### Overview of The Cheesecake Shop

The Cheesecake Shop is a franchisor with 225 franchised cake bakeries and 4 company owned bakeries. 191 bakeries are in Australia, 30 in New Zealand and 8 in the United Kingdom. There are 2,342 active employees (including franchisees). Gross sales excluding GST are about \$155 Million p.a.

### Relevant experience with small business compliance issues and the differences between Australia and New Zealand

Over the past 5 years we have implemented systems and controls which have significantly improved franchisee compliance with wages and superannuation obligations. We now operate a centralised bookkeeping service that processes the payroll for franchisees and utilises the latest cloud-based time and attendance systems using biometric data. We have first-hand experience of what 'unsupervised' franchisee (small business) wage compliance looked like and the issues we and our franchisees faced on the journey to improved compliance.

We are also in a position to compare the different experience between our Australian and our New Zealand franchisees, that operate in different industrial relations systems.

#### ***a. the forms of and reasons for wage theft and whether it is regarded by some businesses as 'a cost of doing business';***

### Small Business Operators Perceive a Low Risk of Enforcement

Small businesses are self-evidently profit focused. Labour costs within our franchisee's businesses average just under 30% of gross sales and this is the second largest expense next to ingredients (cost of sales). Accordingly, managing and minimising labour costs is important if profitability is to be improved. I can recall, perhaps two visits by the Fair Work

Ombudsman (FWO) to any of our franchisees over the past ten years. **Franchisees consider the risk of an audit by the Fair Work Ombudsman as very low.**

### High Risk of Unfair Price Competition from Non-Compliant Competitors

The perceived low risk of enforcement activity by the Fair Work Ombudsman means that wage compliance is generally low amongst small businesses. In addition, compliance with a complex system comes at a cost. The cost of The Cheesecake Shop's compliance system is around \$940,000 p.a. or about \$400 for every employee, which is a significant imposition on compliant small businesses (our franchisees). Extrapolation of this to the economy as a whole gives an indication of the economy-wide cost of complexity.

**Small businesses that are compliant face a real threat from non-compliant competitors with a lower cost base.** We have multiple examples in Australia where our analysis of the cost of sales and competitor pricing leads us to conclude that the competitor is achieving lower wage costs through non-compliance and in many cases exploitation of vulnerable workers on student visas (subclass 500).

- b. the best means of identifying and uncovering wage and superannuation theft, including ensuring that those exposing wage/superannuation theft are adequately protected from adverse treatment;***

### Complexity Fuels Non-Compliance. Employees can be the Auditors

Australian employees are often ignorant of their minimum wage entitlements and accordingly we see relatively few employee complaints. They simply can't work out what they are entitled to. In our opinion this is a key reason why few complained because they simply didn't know that they were being under paid.

In New Zealand, there is a single minimum hourly rate with no penalties on weekends or other factors that cause the rate to vary. There are no industrial awards that complicate the minimum wage in New Zealand. Accordingly, both employees and franchisees were and are aware of what the entitlements are. Five years ago, we saw few if any wage compliance issues in New Zealand compared to poor compliance in Australia. In our opinion, the very high complexity of the Australian wage system is incomprehensible to both small business operators and their employees, particularly to those where English is their second language.

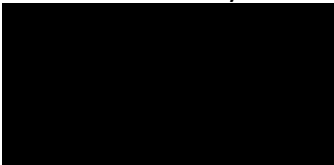
As a result, **we believe that wage system and award complexity is a key factor in small business non-compliance.** The cost of compliance is also high as a result. Not even large businesses can get it right. What hope do Mum and Dad operators have? We have found that compliance is best achieved from within, by ensuring all stakeholders are clear on their obligations. Employees are the best and cheapest form of compliance audit – provided they know what they are entitled to. Simplify the minimum wage and award system to improve compliance and lower compliance costs. It has become hopelessly complex by well-meaning tinkering and successive changes and makes the challenge of compliance almost insurmountable by small businesses.

***h. any related matters.***

Abolish the Hourly Limit on Student (subclass 500) Visas

Student visa (subclass 500) holders are limited to 20 hours of paid work per week (40 hours per fortnight except during vacations whenever they are). Most cannot survive on 20 hours work at the minimum rate. They have a strong survival motive to undertake additional work for cash which exposes them to exploitation. Small business operators under financial pressure or just greed, have a strong motivation to lower their wage costs. In our experience students breaching the 20-hour average per week is rampant. Exploited students generally will not complain out of fear, particularly where their employer is of the same ethnic background. They generally do not understand their rights of protection as vulnerable workers. **The student visa working hour limitation only fuels the black economy, enables exploitation and does little if anything to minimise the impact on employment of Australian residents. We believe that attainment of academic outcomes reported by the relevant education institution, should be the only criteria for a student visa. The limitation on working hours should be removed. This would remove a significant motivation for non-compliance.**

Yours sincerely



Ken Rosebery  
MANAGING DIRECTOR