



5 February 2021

Senate Standing Committee on Education & Employment  
Inquiry into Provisions of the Fair Work Amendment (Supporting Australia's Jobs and  
Economic Recovery) Bill 2020

By E-mail: [eec.sen@aph.gov.au](mailto:eec.sen@aph.gov.au)

Dear Committee Members

I refer to the invitation to file a submission in response to the Senate Standing Committee on Education & Employment's Inquiry into Provisions of the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020. Restaurant & Catering Australia ("**R&CA**") is pleased to provide a submission in this matter.

R&CA is the national industry association representing the interests of more than 47,000 restaurants, cafés and catering businesses across Australia. The café, restaurant and catering sector is vitally important to the national economy, generating over \$37 billion in retail turnover each year as well as employing 450,000 people. Over 92 per cent of businesses in the café, restaurant and catering sector are small businesses, employing 19 people or less.

R&CA delivers tangible outcomes to small businesses within the hospitality industry by influencing the policy decisions and regulations that impact the sector's operating environment. R&CA is committed to ensuring the industry is recognised as one of excellence, professionalism, profitability and sustainability. This includes advocating the broader social and economic contribution of the sector to industry and government stakeholders, as well as highlighting the value of the restaurant

experience to the public.

R&CA strongly supports the bill as introduced but will limit its comments to areas of reform that are of key interest to restaurant, café and catering businesses, namely:

- Casual Employees
- Award Flexibilities
- Agreement Making
- Compliance & Enforcement; and
- The Fair Work Commission

R&CA's members pay predominantly under the Restaurant industry Award (RIA) and to a lesser extent the Hospitality Industry General Award (HIGA). R&CA was involved earlier this year in consultative efforts, coordinated by the federal government between employer and employee representatives, in particular a Working Group relating to Award Simplification. R&CA is registered as an industrial entity and is currently working with the Fair Work Commission on amendments to the RIA.

### Casual Employees

Whilst the Restaurant, Cafe and Catering industry has long relied upon large contingents of casual employees across its broader workforce, R&CA is very supportive of moves to increase the percentage of per-time employees within the hospitality industry. R&CA also strongly supports employers offering employees a choice, after an appropriate period served in a business, to convert their casual employment to a part-time position.

### Award Flexibilities

R&CA is strongly supportive of extending existing JobKeeper flexibilities in the Fair Work Act concerning duties and location of work to employers and employees to The RIA & HIGA.

These flexibilities, with appropriate employee safeguards, will be available for a period of 2 years from the passage of the Bill.

The Bill also introduces part-time flexibility provisions to be available across identified modern awards. This will enable employers and employees to work together to agree additional hours of work to part-time employees who already work at least 16 hours per week, to be paid at ordinary rates of pay.

A common complaint amongst members and staff within the restaurant, café and catering industry is the inability to flexibly increase the number of hours a part-time employee might work in a given roster period without having to pay an overtime rate. Whilst R&CA does not support employers regularly increasing hours outside of an existing employment arrangement to avoid paying overtime rates, often employers would rather pay a casual employee to cover a shift that becomes available at short notice, rather than asking a part-time staff member to cover that shift, as a way of lowering wage costs.

This leaves the part-time employee with less hours (as the employer cannot permanently increase their contracted hours) and less flexibility, and serves to incentivise casual employment for many staff as there is a greater likelihood of being able to work more hours as a casual employee than under a part-time employment contract.

### Agreement Making

Agreement making is rare amongst the RIA compared to other awards, leading to high award compliance amongst the restaurant and café industry and often leading to minimal productivity gains and suppressed wage growth outside of FWC decisions relating to minimum award rates. Unfortunately, whereas awards are often stipulated as a 'safety net' for businesses who are unable to access bargaining, it is now the overwhelming norm amongst both small and large businesses. This is primarily due to the interaction of the current Better Off Overall Test (BOOT) and the RIA.

R&CA supports the proposed limited amendments to the BOOT which would open the door to greater bargaining among RIA paying businesses.

## Compliance & Enforcement

R&CA strongly supports the proposed changes regarding compliance and enforcement.

It is R&CA's view that upskilling business operators is equally as important as upskilling employees when it comes to understanding out workplace laws. This is particularly true in light of the recent underpayment claims in the Fast Food, Restaurant and Café (FRAC) Sector.

The Fair Work Ombudsman, in its Priorities and Approach Report for 2020-21, identified fast food, restaurants and cafes as a "priority sector" and emphasised education, advice and various dispute resolution tools as a reform agenda to address issues of potential non-compliance.

For these reasons, the R&CA strongly supports the small claims provisions of the bill, which will make it simpler for employees and employers to resolve disputes through conciliation and consent arbitration and the voluntary compliance work which will greatly incentivise businesses to seek answers to questions and matters of complexity under the award without fear of enforcement action by the FWO.

Finally, R&CA could potentially be supportive of the introduction of a new criminal offence for dishonest and systematic wage underpayments and/or that increases the value and scope of civil penalties and orders that can be imposed for non-compliance.

## The Fair Work Commission

R&CA supports the proposed changes to the Fair Work Commission, which will increase the efficiency and effectiveness of the Commission in it's day to day work.

## **Conclusion**

R&CA greatly appreciates the opportunity to provide its submission to the Senate Standing Committee on Education & Employment's Inquiry into Provisions of the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020. If you wish to discuss R&CA's views further, do not hesitate to contact our Head of

Policy, Government & Public Affairs, Tom Green

We thank you again for the opportunity to make this submission.

Regards,

**Wes Lambert CPA FGIA MAICD**  
Chief Executive Officer  
Restaurant and Catering Australia