



30 March 2021

Dear Sir/Madam,

**RE: SELECT COMMITTEE ON JOB SECURITY**

We refer to the above media release issued by the Select Committee on Job Security (the “**Committee**”). The Committee has invited submissions on the Terms of Reference raised in the media release by Wednesday, 31 March 2021. Restaurant and Catering Industry Association (“**R&CA**”) is pleased to file a submission in this matter.

Restaurant & Catering Industry Association (the “**R&CA**”) is pleased to provide a submission on the Terms of Reference. R&CA is the national industry association representing the interests of more than 48,000 restaurants, cafés and catering businesses across Australia. The café, restaurant and catering sector is vitally important to the national economy, generating over \$35 billion in retail turnover each year as well as employing 580,000 people.

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.

### **The Rise of the “Gig Economy”**

A research study conducted by the Queensland University of Technology and University of Technology Sydney last year, described as the largest study on the evolving “gig economy,” revealed that there were more than 100 different platforms at the time used to undertake work, with 7.1 percent of respondents reporting that they had used a digital platform to find and perform work. These figures have substantially increased in the current COVID-19 pandemic, with demand for food delivery services, such as UberEats and Deliveroo, becoming “unprecedented.” The R&CA Benchmarking Report 2020 highlighted the increased role of takeaway and delivery to the restaurant industry resulting from the COVID-19 pandemic as the industry further expanded its aggregators into alternative options such as pick-up and delivery. Specifically, 54 percent of Australian restaurants pivoted in response to the pandemic to include home delivery as part of their renewed business model. It is anticipated that 55 percent of the post-COVID-19 revenue stream will be made up by deliveries through online platforms. More recently, UberEats and Deliveroo have been approved to deliver groceries and medicine during Melbourne Stage 4 restrictions.

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### **An “Employee” vs “Independent Contractor?”**

In light of the increasing participation in the “gig economy,” issues such as whether a worker is, in fact, an “employee” or “independent contractor” have become increasingly prevalent. So much is true as it was the case by the recent Fair Work Commission Appeal Decision that an Uber delivery driver was not an

employee, but rather an independent contractor, and, as such, could not bring a claim against Uber for an unfair dismissal.

R&CA expressly does not condone sham contracting arrangements, or any other such arrangement deliberately intended to undermine employees. However, R&CA submits that the current laws and workplace protections are not fit for the purpose in the 21<sup>st</sup> century, particularly as the world of work continues to change in the current and post pandemic climate. R&CA notes that there is no definition of “employment” under the *Fair Work Act 2009* (Cth) and classifying a worker as an “employee” or an “independent contractor” has largely been determined by way of a consideration of a number of key factors on the evidence of an employer-employee relationship. Such an arrangement, in the R&CA’s view, would create opportunities for unintentional misclassifications resulting in disparate inconsistencies. It is R&CA’s view that such a definition, or proposal for a definition, should be a matter for the Commonwealth given that the general breadth of industrial relations matters fall within the jurisdiction of the Commonwealth.

More interestingly, if an employer can prove that they were not aware that the employee was not a contractor, and they were not reckless, they would not be in breach of the Act, nor be subject to any civil penalties. On these bases, the R&CA proposes that appropriate statutory guidelines be enshrined within the *Fair Work Act 2009* (Cth) to resolve any uncertainty. Alternatively, at the bare minimum, the current description of an ‘independent contractor’ should be broadened to reflect the various arrangements today, while providing much needed certainty.

### **The Advantages of Independent Contractors**

While there is some argument that employers should move away from employing independent contractors altogether, R&CA submits that independent contracting arrangements should continue to exist on the following bases:

1. They are popular and an increasing trend, particularly providing contractors with the flexibility to perform work when they desire to do so;

2. Filling “gaps” in employment, particularly in positions and industries in demand, such as food delivery services;
3. Encourages mature age people to remain viable in the workforce; and
4. They are a desirable form of engagement to assist Australia in its recovery in the post-pandemic climate.

## **Conclusion**

R&CA thanks the Committee for considering its submission. If you wish to discuss R&CA’s views further, do not hesitate to contact the Industrial Relations Department by email on [ir@rca.asn.au](mailto:ir@rca.asn.au).

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

Regards,

**Wes Lambert CPA FGIA MAICD**

Chief Executive Officer

Restaurant and Catering Australia