



Restaurant
& Catering

Inquiry into Penalty Rates and Fair Pay

Parliament of Victoria

May 2017

RESTAURANT & CATERING AUSTRALIA

Restaurant & Catering Australia (R&CA) is the national industry association representing the interests of over 40,000 restaurants, cafés and catering businesses across Australia. 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.



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EXECUTIVE SUMMARY

As the national industry association representing the interests of over 40,000 businesses in the hospitality sector, Restaurant & Catering Australia (R&CA) welcomes the opportunity to provide comment to the Victorian Parliament's Inquiry into Penalty Rates and Fair Pay. R&CA supports the Fair Work Commission (FWC) decision handed down in February 2017 to reduce existing penalty rates across certain Awards. R&CA however believes that a reduction in penalty rates covering the Restaurant Award consistent with what the FWC has decided for other Awards is the best mechanism of employment growth across the hospitality sector.

It should be noted that R&CA supports the fundamental principles governing Australia's penalty rates system and recognises the need to financially compensate hospitality sector employees in exchange for working unsociable hours. At the same time, however, there is a necessity to balance this against the needs of employers who are, in many cases, unable to trade due to the excessively high cost of wages associated with penalty rates. R&CA argues that a decrease in existing penalty rates will translate to positive employment outcomes for thousands of Victorians employed in the hospitality sector as these businesses will open for additional hours that they previously would not have considered due to wage costs.

Previous evidence commissioned by R&CA indicated that 52 per cent of restaurant and café owners would employ additional staff if penalty rates were lower, with the average number of additional staff per business equalling 3.15.¹ Furthermore, 41 per cent of businesses indicated they would open for longer hours, for an average of 5.07 additional hours per day.² When applied to employment statistics in Victoria, this equates to an additional 14,342 potential new jobs and an additional 18,200 hours of employment across the State. However, the potential new jobs and additional hours of employment across Victoria may not be realised unless there is a reduction in existing penalty rates. R&CA also argue that should a decrease in penalty rates not proceed that this will ultimately reduce the number of jobs and number of hours of employment in the sector over time.

¹ Jetty Research (2015) *The effect of penalty rates on staffing, opening hours and profitability in Australian restaurants and cafes.*

² Ibid.

INTRODUCTION

R&CA believes that the FWC's recent decision to reduce penalty rates will assist Victoria's hospitality sector in creating positive employment outcomes and growing the overall number of businesses, which currently sits at over 11,000.³ As an industry that is heavily reliant on labour, the impact of high wage costs associated with penalty rates is felt acutely amongst the hospitality sector and acts as a strong disincentive for businesses to trade on weekends. Although there are significant number of industries in Australia where penalty rates apply, the impact "is greatest in those where the days and hours of work are not considered 'standard', meaning industries where weekend, evening and night work are common"⁴. The hospitality sector is no exception to this.

Hospitality sector businesses such as cafés and restaurants are also a key part of an emerging 24-7 economy, "where consumer expectations of access to services has expanded over time so that the costs of penalty rates affect consumer amenity in ways they did not when penalty rates were first introduced."⁵ In this respect, there is a strong imperative for hospitality sector businesses to operate in such a way that services the growing demand amongst consumers. This however is not possible in their current operating environment as businesses choose to either close entirely on weekends, reduce the number of hours in which their businesses operate, or have the owner work the majority of weekend hours. R&CA believes that in reducing the overall costs associated with penalty rates this will allow hospitality sector businesses to respond to the increasing demand amongst consumers for their services and open for longer hours.

Reforms to the existing penalty rates system, which forms part of the FWC's recent decision, will ultimately have a positive impact on over 11,000 cafés, restaurants and catering businesses in Victoria, the thousands of workers who are employed by them, and the consumers who enjoy the services which they provide.

³ Australian Bureau of Statistics (ABS) (2017) *8165.0 Counts of Australian Businesses, including Entries and Exits, Jun 2012 to Jun 2016*. <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/8165.0Jun%202012%20to%20Jun%202016?OpenDocument>

⁴ PwC (2015) *Regulatory Impact Statement on proposed new public holidays in Victoria*, July 2015, p.42.

http://economicdevelopment.vic.gov.au/_data/assets/pdf_file/0009/1309068/Public_holidays_RIS_final_report_30_June_2015.pdf

⁵ Productivity Commission, *Workplace Relations Framework*, Productivity Commission Inquiry Report, Volume 1, No. 76, 30 November 2015, p.406.

EFFECT OF PENALTY RATES ON EMPLOYMENT

ALL VICTORIANS

In R&CA's view, a reduction in penalty rates will result in two major outcomes in terms of employment; firstly, there will be additional jobs in the hospitality sector for Victorians who are currently unemployed and secondly, there will be additional hours of employment for Victorians who are currently underemployed. This is consistent with Paragraph 688 of the FWC's decision which "concluded that reducing penalty rates may have a modest positive effect on employment."⁶ Both of these outcomes are a product of businesses being able to open at times when they were previously unable to because of the exorbitant cost of wages. As a result being open for additional hours, the Victorian hospitality sector consisting of cafés, restaurants and catering businesses, which already generates \$6.3 billion turnover a year⁷, will be able to make an even larger contribution to the state's economy.

R&CA has produced a significant body of evidence to demonstrate a correlation between a lowering in penalty rates and positive impacts on employment outcomes. In previously commissioned research, a survey of 1,000 restaurant and café owners and managers found that 52 per cent of businesses would employ additional staff if penalty rates were lower.⁸ 41 per cent of businesses surveyed indicated that they would open for longer hours when asked what they would do if penalty rates were reduced.⁹ Of the businesses who indicated that they would employ additional staff in penalty rates were reduced, the average number of additional staff they would employ was 3.15 per day.¹⁰ The average number of extra hours that these businesses would stay open for was 5.07 per day.¹¹

When these multipliers are applied to employment data from Victoria's 37 Federal electorates, it is estimated that there would be an additional 14,342 jobs and 18,200 additional hours of employment potentially created in the state if existing penalty rates were reduced. These statistics have also been derived from information sourced from the Australian Bureau of Statistics, the Australian Business Register as well as the latest available Census data. A detailed breakdown of the potential additional jobs and additional hours of employment can be viewed in Table overleaf.

⁶ Fair Work Commission, (2017) *4 yearly review of modern awards – Penalty Rates*, February 23, p.142.
<https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/2017fwcfb1001.pdf>

⁷ Australian Bureau of Statistics, (ABS), (2017) *8501.0 - Retail Trade, Australia, Mar 2017*

<http://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/3DDA13ECDC094B1CCA257734002042F2?opendocument>

⁸ Jetty Research (2015) *The effect of penalty rates on staffing, opening hours and profitability in Australian restaurants and cafes.*

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid

Table 1: Potential employment outcomes in Victoria if penalty rates were lowered

Employment in the Café, Restaurant & Catering sector in Victoria					
Commonwealth Electorate	CURRENT EMPLOYMENT ²			POTENTIAL EMPLOYMENT	
	Café, Restaurant & Catering businesses ^a	Café, Restaurant & Catering employment ^b	Proportion of state Café, Restaurant & Catering employment	Potential new jobs per electorate ^c	Potential additional hours of work per day ^d
ASTON	216	1,229	2.1%	296	375
BALLARAT	241	1,274	2.1%	306	389
BATMAN	243	2,334	3.9%	561	712
BENDIGO	240	1,136	1.9%	273	347
BRUCE	237	1,595	2.7%	384	487
CALWELL	278	1,578	2.6%	379	481
CASEY	304	1,282	2.1%	308	391
CHISHOLM	287	2,259	3.8%	543	689
CORANGAMITE	252	1,541	2.6%	371	470
CORIO	320	1,487	2.5%	358	454
DEAKIN	215	1,423	2.4%	342	434
DUNKLEY	255	1,273	2.1%	306	389
FLINDERS	260	1,362	2.3%	327	416
GELLIBRAND	234	1,952	3.3%	469	596
GIPPSLAND	201	1,103	1.8%	265	337
GOLDSTEIN	307	1,779	3.0%	428	543
GORTON	82	1,338	2.2%	322	408
HIGGINS	563	2,498	4.2%	601	762
HOLT	123	1,111	1.9%	267	339
HOTHAM	220	1,648	2.8%	396	503
INDI	248	1,143	1.9%	275	349
ISAACS	133	1,141	1.9%	274	348
JAGAJAGA	197	1,358	2.3%	326	414
KOOYONG	375	2,336	3.9%	562	713
LA TROBE	124	1,260	2.1%	303	385
LALOR	124	1,481	2.5%	356	452
MALLEE	185	792	1.3%	190	242
MARIBYRNONG	230	1,982	3.3%	477	605
MCEWEN	105	1,338	2.2%	322	408
MCMILLAN	223	1,017	1.7%	244	310
MELBOURNE	2,171	4,318	7.2%	1,038	1,318
MELBOURNE PORTS	942	2,670	4.5%	642	815
MENZIES	245	1,940	3.3%	467	592
MURRAY	168	808	1.4%	194	247
SCULLIN	136	1,456	2.4%	350	444
WANNON	201	1,024	1.7%	246	313
WILLS	200	2,375	4.0%	571	725
TOTAL	11,086	59,642	100%	14,342	18,200

^aBusiness count numbers derived from the Australian Bureau of Statistics (ABS) 8165.0 – *Counts of Australian Businesses, including Entries and Exits, Jun 2010 to Jun 2014*. Dataset is derived from the Australian Business Register, maintained by the Australian Tax Office.

^bEmployment data derived from ABS 2011 Census and detailed industry of employment (ANZSIC 4511 Cafés and Restaurants) and Place of Usual Residence (UR).

^cNote: Based on multipliers identified in Jetty Research commissioned for R&CA. Number of potential employing businesses in café and restaurant, and catering sector determined by national average of employing businesses in these sectors as well as electorate's share of total café, restaurant and catering employment in the state.

^dNote: Based on multipliers identified in Jetty Research commissioned for R&CA. Number of potential employing businesses in café and restaurant, and catering sector determined by national average of employing businesses in these sectors as well as electorate's share of total café, restaurant and catering employment in the state.

WOMEN

Women make up a significant proportion of the hospitality sector workforce with the Department of Employment estimating that women account for 55.6 per cent of those employed in the Accommodation and Food Service sector, compared to 45.9 per cent for all other industries.¹² There are also a significant proportion of women employed across specific occupations within the hospitality sector including 28,965 female café and restaurant managers, 24,935 female café workers, 21,308 female chefs, 46,361 female kitchen hands, 17,748 female baristas and 16,836 female cooks.¹³ In 2014-15, there were almost four times as many female café workers as there were male café workers, more than double the number of female baristas and 8,965 more female café managers.¹⁴

If women were to account for 55.6 per cent of the projected additional jobs if penalty rates were reduced in Victoria, this would result in 7,974 additional jobs for women across the hospitality sector. If 55.6 per cent of the projected additional hours of employment were worked by women, then this would translate to an additional 10,119 hours. Given the potential new jobs and additional hours of employment across the state's hospitality sector, R&CA believes that a reduction in penalty rates would be beneficial for the employment outcomes of Victorian women.

YOUNG WORKERS

As of February 2017, 659,000 young Australians were either unemployed or underemployed.¹⁵ The rate of youth unemployment is particularly pronounced in Victoria, with 14.9 per cent of 15 to 24 year-olds unemployed in 2015, having increased from 9.4 per cent in 2008.¹⁶ This can be compared to the overall unemployment rate in Victoria which was 6.1 per cent in March 2017.¹⁷ A total of 15 per cent of Victoria's workforce is aged between 15 and 24 years, compared to the Australian average of 16 per cent.¹⁸

Given that the median age for the café, restaurant and Takeaway Food sector is 24 years¹⁹, it is reasonable to conclude that young Victorians will account for a significant proportion of the projected 14,342 additional jobs

¹² Department of Employment, (2014), *Industry Outlook - Industry Outlook Accommodation and Food Services*, December, <https://cica.org.au/wp-content/uploads/2014-Accommodation-and-Food-Services-Industry-Outlook.pdf>

¹³ Australia Taxation Office (ATO) (2017) *Taxation statistics 2014-15* <https://www.ato.gov.au/About-ATO/Research-and-statistics/In-detail/Taxation-statistics/Taxation-statistics-2014-15/>

¹⁴ Ibid.

¹⁵ Brotherhood of St Laurence, (2017) *Generation Stalled, Young, Underemployed and Living Precariously in Australia*, March, http://library.bsl.org.au/jspui/bitstream/1/9409/1/BSL_Generation_stalled_young_underemployed_2017.pdf

¹⁶ Carvalho, P. 2015, *Youth Unemployment in Australia*, The Centre for Independent Studies, Research Report, November, <https://www.cis.org.au/app/uploads/2015/11/rr7.pdf>

¹⁷ Australian Bureau of Statistics (ABS), (2017) *6202.0 - Labour Force, Australia, Mar 2017* <http://www.abs.gov.au/ausstats/abs@.nsf/mf/6202.0>

¹⁸ Department of Employment (2016), *Australian Jobs 2016*

¹⁹ Department of Employment, (2014), *Industry Outlook - Industry Outlook Accommodation and Food Services*, December, <https://cica.org.au/wp-content/uploads/2014-Accommodation-and-Food-Services-Industry-Outlook.pdf>

potentially created across the hospitality sector following a reduction in penalty rates. The Department of Employment has estimated that 43 per cent of those employed in the accommodation and food services industry are aged between 15 and 24 years.²⁰ If young Victorians accounted for 43 per cent of the additional new jobs potentially created following a reduction in penalty rates, this would result in 6,167 additional jobs for Victorians aged between 15 and 24. When applied to the number of potential additional hours of employment, young Victorians would gain 7,826 hours. In light of this, R&CA believes that a reduction in penalty rates will have positive outcomes on the employment outcomes of young Victorians.

VICTORIANS IN RURAL AND REGIONAL AREAS

The hospitality sector is also a significant source of employment across rural and regional Victoria. In the ten Victorian federal electorates categorised as rural and regional, there were a total of 2,064 café, restaurant & catering businesses, with total employment across these businesses amounting to 11,176. These businesses account for 18.6 per cent of employment across Victoria's entire café, restaurant and catering sector. The rural and regional electorates with the largest number of cafés, restaurants and catering businesses were Corangamite, Indi, Bendigo, Ballarat, and McMillan.

Following a reduction in penalty rates, Victorians living in these in rural and regional electorates would stand to benefit from a potential 2,676 additional jobs and 3,412 hours of additional employment. A breakdown in the additional jobs and additional hours of employment potentially created in ten rural and regional Victorian electorates in response to penalty rates being lowered is contained in Table 3 below.

Table 3: Potential employment outcomes in rural and regional Victorian electorates if penalty rates were lowered

Employment in the Café, Restaurant & Catering sector in Rural/Regional Victoria					
Commonwealth Electorate	Current Employment			Potential Employment	
	Café, Restaurant & Catering businesses	Café, Restaurant & Catering employment ^b	Proportion of state Café, Restaurant & Catering employment	Potential new jobs per electorate ^c	Potential additional hours of work per day ^d
BALLARAT	241	1,274	2.1%	296	389
BENDIGO	240	1,136	1.9%	273	347
CORANGAMITE	252	1,541	2.6%	371	470
GIPPSLAND	201	1,103	1.8%	265	337
INDI	248	1,143	1.9%	275	349
MALLEE	185	792	1.3%	190	242
MC EWEN	105	1,338	2.2%	322	408
MCMILLAN	223	1,017	1.7%	244	310
MURRAY	168	808	1.4%	194	247
WANNON	201	1,024	1.7%	246	313
TOTAL	2064	11,176	18.6%	2,676	3,412

²⁰ Ibid.

^a Business count numbers derived from the Australian Bureau of Statistics (ABS) 8165.0 – *Counts of Australian Businesses, including Entries and Exits, Jun 2010 to Jun 2014*. Dataset is derived from the Australian Business Register, maintained by the Australian Tax Office.

^b Employment data derived from ABS 2011 *Census* and detailed industry of employment (ANZSIC 4511 Cafés and Restaurants) and Place of Usual Residence (UR).

^c Note: Based on multipliers identified in Jetty Research commissioned for R&CA. Number of potential employing businesses in café and restaurant, and catering sector determined by national average of employing businesses in these sectors as well as electorate’s share of total café, restaurant and catering employment in the state.

^d Note: Based on multipliers identified in Jetty Research commissioned for R&CA. Number of potential employing businesses in café and restaurant, and catering sector determined by national average of employing businesses in these sectors as well as electorate’s share of total café, restaurant and catering employment in the state.

Table 4: Potential employment outcomes in Victoria if penalty rates were lowered according to category of workers

Employment in the Café, Restaurant & Catering sector in Rural/Regional Victoria		
Worker Category	Potential Employment	
	Potential new jobs	Potential additional hours of work per day
Victorians (overall)	14,342	18,200
Victorian Women	7,974	10,119
Young Victorian Workers	6,167	7,826
Rural and Regional Victorians	2,676	3,412

QUALITATIVE EVIDENCE

R&CA 2017 BENCHMARKING SURVEY

As part of R&CA's 2017 *Industry Benchmarking Survey*, all survey respondents were asked if they had any specific comments regarding staffing costs, public holidays and labour. A significant number of the comments received during this survey related to the high cost of wages and specifically how penalty rates affected the ability of businesses to remain open. Some of the comments provided included:

- *"Penalty rates are killing the industry."*
- *"We close public holidays due to casual penalty rates."*
- *"If staffing costs were to increase any further, I do not see how we would stay open."*
- *"Wages are our biggest challenge."*
- *"Implications of penalty rates on Sundays and Public Holidays making it extremely difficult to cover the costs."*
- *"Need to open public holidays and longer hours but cannot afford wage costs."*
- *"Public Holiday Wages too high to trade."*
- *"Wages increases almost each year however, we cannot increase price every year. It is very difficult to absorb this increasing cost."*
- *"The overtime paid to staff on Sat/Sun/PH leads to tighter rosters as we employ less staff."*
- *"Wages, in general, is the hardest and most expensive part of my business and they make it hard to run at a profit and more importantly, reward my best and key staff."*
- *"Staffing costs are by far our biggest cost and continue to hurt our business."*
- *"Operating in a tourist area opening Sundays and public holidays is essential for both the business and also for the visitors but the costs are increasingly prohibitive."*
- *"I don't have an issue with Saturday or Sunday penalties but I believe PH is far too high at 2.5 times."*
- *"Prohibitively expensive to open on PH."*
- *"Weekend rates are excessive and a burden on the business."*

Further comments and qualitative feedback provided during the survey can be viewed in the Appendix section of this submission.

CONCLUSION

R&CA welcomes the opportunity to provide comment to the Victorian Parliament's Inquiry into Penalty Rates and Fair Pay. R&CA supports the decision of the Fair Work Commission (FWC) handed down in February 2017 to reduce existing penalty rates across certain Awards. R&CA however believes that a reduction in penalty rates covering the Restaurant Award consistent with what the FWC has decided for other Awards is the best mechanism of supporting employment growth across the hospitality sector.

R&CA supports the fundamental premise of penalty rates that workers carrying out tasks during unsociable hours should be duly compensated for doing so. R&CA however believes that this should not be at the expense of business owners being able to open. Research commissioned by R&CA found that that 52 per cent of restaurant and café owners would employ additional staff if penalty rates were lower, with the average number of additional staff per business equalling 3.15.²¹ Furthermore, 41 per cent of businesses indicated they would open for longer hours, for an average of 5.07 additional hours per day.²² When applied to employment statistics across Victoria's café, restaurant and catering sector, this equates to an additional 14,342 potential new jobs and an additional 18,200 hours of employment. Without a reduction in penalty rates, it is possible that not only will these projected jobs fail to materialise, but that jobs growth and hours of employment in the hospitality sector will in fact decrease.

²¹ Jetty Research (2015) *The effect of penalty rates on staffing, opening hours and profitability in Australian restaurants and cafes.*

²² Ibid

APPENDIX I: QUALITATIVE EVIDENCE FROM R&CA'S 2017 BENCHMARKING SURVEY

Qualitative responses of Benchmarking survey participants regarding staffing costs, public holidays and labour?
Penalty rates and payroll taxes are killing us.
Penalty rates are killing the industry.
We close public holidays due to casual penalty rates.
Should be flat rate any time.
If staffing costs were to increase any further, I do not see how we would stay open.
Wages are our biggest challenge.
Implications of penalty rates on Sundays and Public Holidays making it extremely difficult to cover the costs. Increases in awards is making it difficult to pass on the costs to menu sell prices due to competitiveness and market implications, providing value for money is extremely important and cannot keep increasing sell prices to cover award wage increases.
Need to open public holidays and longer hours but cannot afford wage costs.
I move salaried staff rosters to make sure they cover most of the hours and less casuals.
Public Holiday Wages too high to trade.
The standard hours regulation as stated in the Industrial Relations Act 1979 should be read to define any hours worked up to the maximum considered by this award i.e. 38 or 40 hours, regardless of time period in which they are worked. Penalties should only apply once this full time hourly limited has been reached and/or exceeded as hospitality is no different to an office job except we do most of our hours after normal and accepted knock off time of 5pm.
We generally avoid employing casual & part-time staff on public holidays. Of course, this has its own penalty in that salaried staff expect a day off in-lieu of the public holiday.
Staff costs continue to be a big burden, we try very hard to have a balance of younger(cheaper) staff particularly on Public holidays
Wages increases almost each year however, we cannot increase price every year. It is very difficult to absorb this increasing cost.
The overtime paid to staff on Sat/Sun/PH leads to tighter rosters as we employ less staff.
*The threshold on payroll tax needs to be lifted! Too much of a burden on small business. *Public holiday/weekend rates too high for an industry that is 'always open'.
Wages, in general, is the hardest and most expensive part of my business and they make it hard to run at a profit and more importantly, reward my best and key staff.
More spread of rates, no penalties, lower minimum wage.
Staffing costs are by far our biggest cost and continue to hurt our business. Even a small change of having caterers included in the restaurant award would be of benefit to us is some aspects of early and late night shift penalties. Continued cost increases in wages simply lead to increased costs of products to clients or more work done by fewer or family.
We will be implementing a public holiday surcharge as the public want us open, but we lose money opening due to the labour costs.
Operating in a tourist area opening Sundays and public holidays is essential for both the business and also for the visitors but the costs are increasingly prohibitive.
The Christmas public holidays increased my payroll by \$6500 for the period. Just ridiculous. Implication of penalty rates especially public holidays make it impossible to cover costs.
It's too expensive to open - yet missing the out on the cash flow effects business too. Unreasonable, used to be if a holiday fell on a weekend, then the following weekday would become a public holiday rate. Now it's double public holiday penalty rates. It's to a point where we will just not open.
I don't have an issue with Saturday or Sunday penalties but I believe PH is far too high at 2.5 times.
Public holiday loading rates need to be reduced as it becomes expensive and limits profit on these days yet we are expected to be open.
I am targeting to employ more juniors in lieu of senior workers in an endeavour to reduce staff costs.
We are also mindful to employ juniors to fill kitchen hand positions and front of house food runner positions in an attempt to reduce wage costs.
Prohibitively expensive to open on PH.
Our premises are located at a cellar door, whenever we have opened on public holidays even though we are extremely busy throughout the day the wages are huge and it is really not worth opening.
The staffing cost has become increasingly burdensome and has led to us closing for breakfast during winter. We are Australia's best breakfast venue and we cannot afford to pay our staff during that time!
Weekend rates are excessive and a burden on the business.

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