



Eltham Valley Pantry Pty Ltd

713 Boatharbour Rd, Eltham, NSW 2480

Ph : 02 6629 1418 Fax : 02 6629 1419

e-mail : julie@elthamvalley.com.au

ABN : 30 003 844 522

Re : Retail Industry Inquiry

Productivity Commission 2011

This submission pertains to small scale owner operated tourism/café/restaurant operations and the difficulties currently facing such businesses.

I am the owner and manager of a small (under 100 seat) café/restaurant on our farm in rural NSW. We are pioneers of the agritourism industry in this district, deciding to try to make a living from our farm by adding value by processing the pecans we grow on the farm, and operating a café/restaurant for people wishing to visit the farm. I have significant business experience, but have only operated within the hospitality industry for the last four years.

The hospitality industry in Australia is becoming increasingly unsustainable for small food only establishments. This is basically due to the fact that meal prices have remained relatively stable over the last ten years while operating costs such as labour, rent, insurance, utilities and government compliance costs have significantly and relentlessly increased. Also, since the introduction of the Fringe Benefits Tax, the profile of dining customers has shifted from corporations with deep pockets, to individual consumers with greater budgetary constraints. This has also kept dining prices down. Remember when dining out was a rare and extravagant experience reserved for special occasions? Now it is part of the regular range of outsourced service experiences.

The other big hit for food only establishments has been the introduction of the GST. For café/restaurants with chefs and kitchens, this tax is effectively a turnover tax (see later discussion) which is universally applied to businesses making profits or losses.

This unsustainability is being masked by the number of owner operators working for very low return. No-one wants to admit how little money they are earning in this industry. Even the ATO can't believe how unprofitable this industry is, instead being convinced that "cash" is being squirrelled away in large amounts and stepping up their audits accordingly.

However, the evidence is there for all to see.

With the exception of a few high end fully booked restaurants, most restauranters in Australia are doing it tough. It shouldn't be this difficult to make a living in the food industry.

According to the NSW Catering Association, the average café/restaurant turns over approximately \$ 500,000 per annum, or \$ 10,000 per week. When a range of business models are examined, (see later) it becomes obvious that it is much easier to lose money than make it in the hospitality industry.

Also, there is a constant churn of restaurants opening, then going broke and closing up when the money runs out. When a restaurant goes broke other businesses (and generally the ATO usually being a major creditor) also lose revenue. Ask the suppliers to the industry how often they end up with unpaid invoices. In my experience, many suppliers start getting nervous if they are not paid within 7 days, and others insist on upfront payment from café/restaurants.

This industry has been characterised by a lack of effective advocacy, and little industry assistance. Many restauranters work in excess of 50 hours per week at their establishments, then come home to start their compliance work – they do not have the time nor the levels of education required to be able to make submissions to the Productivity Commission.

Billions have been poured into assistance for other industries but not for this one; instead the industry has been hit by the FBT and the GST over the same period.

Why does saving this industry matter?

Because it is essential as a service provider for other industries and in its unique ability to create both high skilled and low skilled jobs both directly and indirectly.

The hospitality industry is a labour intensive industry, and has been unable to capitalise on any meaningful technology based productivity improvements. People are still required to prepare and serve a meal of any reasonable quality. Consequently, labour costs are the primary operating expense.

This submission to the Productivity Commission pertains to two issues :

1. Labour Market Issues
2. Assistance via GST Reform for the most vulnerable industry sector

Labour Market Issues

Whilst recognising that people need a living wage, there are a number of areas within the hospitality industry at present that affect the operating viability of café/restaurants, and their ability to create both permanent and part time jobs.

Specific areas which should be addressed are :

- (a) Apprentices
- (b) Public Holidays
- (c) Penalty Rates (Particularly for Juniors)
- (d) Redefinition of a Small Business wrt Unfair Dismissal legislation

(a) Apprenticeships

It is my submission that the current apprentice wage scales in the restaurant industry are pricing them out of the market.

Current apprentice wage rates are :	1 st year	\$ 8.48
	2 nd Year	\$ 9.98
	3 rd Year	\$ 12.35
	4 th Year	\$ 14.72

These hourly rates may seem low, but when considering the cost of an apprentice to a business, it should be remembered that although the business pays for 38 hours per week, this includes 8 hours per week at TAFE with only 30 hours per week in the workplace.

Therefore the effective hourly cost to the business is :

1 st year	\$ 10.74
2 nd Year	\$ 12.64
3 rd Year	\$ 15.64
4 th Year	\$ 18.64

Remembering that apprentices are permanent employees and are therefore entitled to 4 weeks annual leave, paid public holidays and paid sick leave, the cost to the business of employing them is significant.

Adult workers (entitled to similar benefits) can be employed on a permanent part time basis from the rate of \$ 15.23 per hour.

A government incentive payment of approximately \$ 2500 has been available to employers on commencement and completion of apprentices but this covers only the first six weeks of a first year's wages, or four and a half weeks of a final year's wages.

It must be remembered that first year apprentices are very inexperienced when they start work and often incur significant additional costs for businesses, through breakage, food spoilage and failed cooking assignments. They must be taught to work and can take up significant chef's and management time.

I have taken on four apprentices in the last four years, of which three are still working in the industry, a successful retention rate for hospitality. My third year apprentice commenced with 35 in his first year - only six of that cohort remain. Are exit interviews ever conducted with apprentices to establish why they are dropping out? Are they disillusioned with hospitality? Have they become unaffordable for their employers? Do they feel that they are not being paid enough? The answers to this question may provide guidance for the hospitality training industry.

I would be unlikely to take on another apprentice under the current wage arrangements. For the \$ 322 it would cost me to hire a first year apprentice, for 30 hours (at say 50% productivity), I could hire a permanent part time adult for 20 hours - better value for money.

Perhaps the solution would be for the government to fund the TAFE day, rather than pay an upfront cash incentive to employers. The weekly cost to a business then of a first year apprentice of \$ 254.40 plus on costs would more closely reflect their contribution to the business and provide a real incentive for taking them on. The government would then be funding apprentices as they actually completed their training, rather than paying speculative lump sum payments. This system would also be less susceptible to poaching, and may act as a greater incentive for employers to retain their apprentices to completion. It would also provide an incentive for apprentices to attend their TAFE classes.

Public Holidays

The treatment of public holidays in the new Modern Restaurant Award is enough to strike fear into any tourism operator's heart. We are transitioning to a pay rate of two and a half times normal rate to operate on a Public Holiday. It is difficult enough to make a profit at normal rates and this type of penalty rate will result in wide spread closure of restaurants on public holidays.

To be classed as a tourism venture in NSW, one is required to open for a minimum of six hours per day. Consider the following models for a six hour operation on a normal day :

Income

30 customers @ \$ 20 per head for breakfast :	\$ 600
50 customers @ \$ 30 per head for lunch :	\$ 1500
Total (less GST)	\$ 1910

Expenses

Food Costs (typically 30%)	\$ 573
Chef Wage (including on costs)	\$ 250
Apprentice Wage (including on costs)	\$ 140
Kitchen Hand (casual - 6 hours + superannuation)	\$ 140
2 Senior Casual FoH Staff (6 hours + superannuation)	\$ 265
1 Junior Casual FoH Staff (4 hours)	\$ 50
Rent	\$ 200
Insurance/Phone/Utilities	\$ 100
Total :	\$ 1708

Gross Operating Profit : \$ 202

Let us consider a few alternative models :

Ordinary Day - 10 fewer customers :

Revenue (after GST payment) :	\$ 1682
Costs :	
Food :	\$ 505
Wages :	\$ 845
Rent etc :	\$ 300
Total :	\$ 1650

Gross Operating Profit : \$ 32

Public Holiday - 10% more Customers

**Revenue (including 10% surcharge) + 10% more customers \$ 2300
But Less GST**

Costs :	
Food	\$ 690
Wages at Public Holiday Penalty rates	\$ 2112
Rent etc :	\$ 300

Total : **\$ 3102**

Operating LOSS : \$ 802

Cost to business of not opening at all :	
Wages (permanent staff)	\$ 390
Rent etc	\$ 300
 Total :	 \$ 690

Therefore it is cheaper for a business to close on a Public Holiday than operate at a 2 and 1/2 times penalty rate. At least at double time, time in lieu can be easily arranged.

1. Two things can be deduced from the above models :
 - Margins in the tourism/hospitality industry are self evidently small and due to the unpredictable nature of the industry it is easy for a business to incur losses on any quiet day.
 - Public Holidays and Penalty rates have an extremely negative impact on the financial viability of the tourism/hospitality industry.

Clause 38.2 in the Modern Award makes the extraordinary provision that in the case that an employee is normally not at work when a Public Holiday occurs, they should be paid an additional day's pay for not working on that day.

This is unreasonable as the employee has still had the day off, and been paid whilst having the day off as part of their regular weekly salary. In addition, for every day that an employee is being paid an extra day's pay for not working, the owner/operator works another day with no pay.

It is a general expectation of the public that most tourism/restaurant facilities operate over weekends, and most permanent employees work regular shifts which include Saturdays and Sundays, having their rostered days off during the week.

Why then, (especially in light of Clause 38.2), should operators have to pay penalty rates when a normal rostered working day (such as Easter Saturday) is gazetted a Public Holiday? And why should some Public Holidays be gazetted twice? For example, New Year's Day 2011 had gazetted Public Holidays on Saturday January 1st as well as Monday January 3rd.

In NSW in 2011, Good Friday, Easter Saturday, Easter Sunday, Easter Monday and Easter Tuesday (for Anzac Day) are all gazetted Public Holidays - an opportunity for tourism operators to lose money for five days in a row. If all cafes and restaurants across NSW closed for these five days, would the Retail Employees Unions still gloat via newspaper advertising that their lives were now in balance?

We will open on Easter Saturday and Easter Sunday as a service to our customers, work both days ourselves, and trade leave days on quiet days with our permanent staff in an attempt to at least break even on those two days. We will receive a multitude of irate phone calls from people wishing to book lunch on Easter Monday who have no idea of the impact of penalty rates on our operating costs.

Penalty Rates (Specifically for Juniors)

Whilst large corporations have been able to negotiate away penalty rates to a large extent, smaller businesses without the same negotiating power are stuck with an anachronistic penalty rates schedule. Penalty rates should only apply to Christmas Day, Boxing Day and Good Friday, as these are days which are largely regarded as Special Holidays by the broader community. On all other days (especially Saturdays and Sundays), there is a general expectation by the community that they will be able to travel, shop and dine anywhere at will.

It is my submission that if people have a permanent or part time job which includes a Saturday or Sunday shift on a regular basis, they should not be subject to penalty rates for working those shifts, regardless whether or not the regular shift includes a Saturday, Sunday or Public Holiday (other than those specified).

It is especially ridiculous to be required to pay penalty rates to school kids, since it is not a penalty for them to be working on a weekend; in fact in many cases those are their preferred days of work. It is a nice thing to be able to offer young local school kids a weekend job. We usually need extra staff on the weekend and school kids bring a youthful energy to the place which is appealing.

However, in many cases it is their first experience of work and they must learn how to work. They are nowhere near as productive as adults and are unable to undertake the full range of required work related activities such as the service of alcohol. They also require more management and supervision than adult workers.

Whilst it is appropriate to offer hourly rate increases with age (and consequent maturity), it would be an incentive to give more school kids a casual job.

Small Business Definition

A further disincentive to hire young casual workers is the changed definition of a small business from 15 FTE employees (a fair and specific definition of a small business) to the ridiculous "head count of 15"

The "head count of 15" definition is particularly onerous for the hospitality sector as businesses with only 8 FTE can easily exceed the "headcount of 15".

I previously had a number of job sharing arrangements with young people who worked 6 hours each alternative Sunday and could cover for each other. In order to remain under the "headcount of 15" I have now halved the number of kids working under these arrangements by now requiring them to work every Sunday instead of alternative Sundays. This arrangement is less suitable for me and for them, but it has been thrust upon us by this ridiculous redefinition of a small business.

Inexorable Wage Increases

Whilst it is inevitable that lower paid workers will continue to receive increases to their standard hourly wage, some reform with regard to holidays and penalty rates would result in additional job creation in this sector, and may assist with the viability of ongoing operation.

Information for Employers about Wage Rates

Whilst employers are expected to correctly pay and manage their employees, with government quick to prosecute for any transgression, the same organisations launching employer prosecutions have completely abrogated their responsibility with regard to accurately informing employers as to their obligations. Ask any government body which is the appropriate award for your workplace - they will not answer. Where are the wage tables which can be easily understood and applied by employers? They do not exist.

To say " we cannot give specific advice about your workplace" is a complete cop out. All government telephone conversations with the public are now recorded so the disclosure provided by an employer prior to the provision of award advice is on the record in case of any future dispute.

Employers want to do the right thing - they need clear and specific information from the relevant government authority as to the appropriate payment obligations. At present, one is required to belong to an industry association if one is to administer an industrial award with confidence. This costs hundreds of dollars each year.

Fair Work Australia (or the equivalent body) should articulate employer obligations in an easily understandable form on their web site or their information line and not have to resort to the line ..."you'll have to consult a lawyer to get that information"

If awards can only be interpreted by a lawyer, then they should be rewritten so that both employers and employees are clear as to their entitlements and obligations.

GST as a Turnover Tax

I do not believe that when the GST was introduced, it was ever envisaged to be a turnover tax. However, this is virtually the case on café/restaurants which operate kitchens and prepare most of their own food on the premises.

It is ironic, that these businesses which created the most skilled jobs (ie employ and train chefs) are particularly disadvantaged by the GST.

Consider the following :

Cakes Bought In

A cake is purchased for \$33 and sold by the slice for a total return of \$66. The café pays \$6.00 GST and receives an input tax credit of \$3.00 generating a profit of \$ 30.00.

Cake Made on Site

A cake costs \$33 to produce on site (say \$18 labour and \$15 ingredients) and is sold by the slice for a return of \$66. The café pays \$6 GST but receives no input tax credits as both the labour and the ingredients used to make the cake (eggs, butter, flour etc are GST FRE.) This café only makes a profit of \$ 27.00

This is a 10% differential, negatively impacting the establishment which is employing more staff.

When this scenario is replicated across the entire range of food offerings; quiches, pies pickles, sauces etc it can be seen that there is an overall 10% discriminatory effect on businesses which produce their own food on site.

On the average turnover of \$ 500,000 this profit differential is \$ 50,000 per annum, or the equivalent of the owner operator's wage.

It is also equivalent to the GST which is in effect operating as a turnover tax as the inputs of labour and fresh food ingredients attract no input credits.

Whilst some inputs receive tax credits eg utilities charges, some foods such as icecream, and capital purchases, these purchases are insignificant when compared with expenditure on labour and fresh food.

It is also difficult for restaurants (unless they are chains or are franchised) to achieve any economies of scale.

Do we really want all our restaurants to be homogenous?

Small owner operated restaurants do not have the resources to negotiate work place agreements to ameliorate penalty rates or over the top award entitlements – they are hit from every angle.

If they are to survive, they will need some form of industry assistance. In the USA, hospitality staff cost the restaurant \$3 per hour with the remainder of their wages coming from a share of the compulsory 15% service surcharge.

It is my submission that in the current operating environment, small (under 100 seats) owner operated café/ restaurants which prepare their own food on site and rely solely on food income are the most vulnerable to business failure.

Obviously restaurants in hotels and clubs which have additional income streams do not have the same issues.

It is my submission that these most vulnerable businesses should be exempted from the GST both from the financial viability viewpoint, and to alleviate some of the business compliance burden which is placed upon them.

If the criteria for this exemption are sufficiently narrow, then hopefully the budget bottom line will not be too impacted.

Obviously such a proposed exemption needs to be modelled by the ATO, but the benefits of this measure could include the following :

- Lower failure rate of small restaurants (ATO not missing out on PAYG and other instalment income)
- Employees not missing out on superannuation and other entitlements as a consequence of business failure.
- Owners able to earn salary and pay income tax
- Owners able to make a profit and pay company tax
- Restaurant viability means more jobs and traineeships for the economy at large.