

*Submission to the
Australian Government
Regulation Taskforce*



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Restaurant & Catering Australia

Restaurant & Catering Australia (R&CA) is the peak national organisation representing the interests of restaurateurs and caterers.

The Association is a federation of State Associations that work together on matters of national importance. The State Associations have a combined membership of 6,000. There is an R&CA member restaurant and catering association in every State and the Australian Capital Territory.

The Restaurant Industry

The Australian Bureau of Statistics reports some 28,900 restaurant, café and catering businesses that are registered for GST. Of these businesses, 57% turn over between \$100,000 and \$499,000 and 94% turnover under \$500,000. There are eight businesses that turn in excess of \$20 Million¹.

Restaurant, cafe and catering turnover for the month of September 2005 was \$949.9 million. This was lower than turnover in the same month in 2004. September 2005 brings up eleven consecutive months with negative growth. In September 2005, compared to September 2004, the industry is 6.2% down in revenues across Australia, and at levels equivalent to 2003.

A report released by the Australian Bureau of Statistics² in July 2005 shows a slowing in restaurant profits (as forecast by the R&CA) with 63.4% of businesses (the businesses employing less than 10 people) generating less than 2% net profit.

Businesses reported to the ABS an average net profit of 4%, down 16% on the previous survey period (1998-1999). Labour costs have risen an average of 17% from 29.4% of turnover to 34.3% of turnover, demonstrating the need for workplace reform. In the same period turnover increased by 7% among 7.1% more businesses. The slice of turnover is therefore the same on average as in 1998 / 99 but businesses face significantly higher wage bills. This is in part attributable to increases in non-wage labour costs, specifically superannuation and workers compensation.

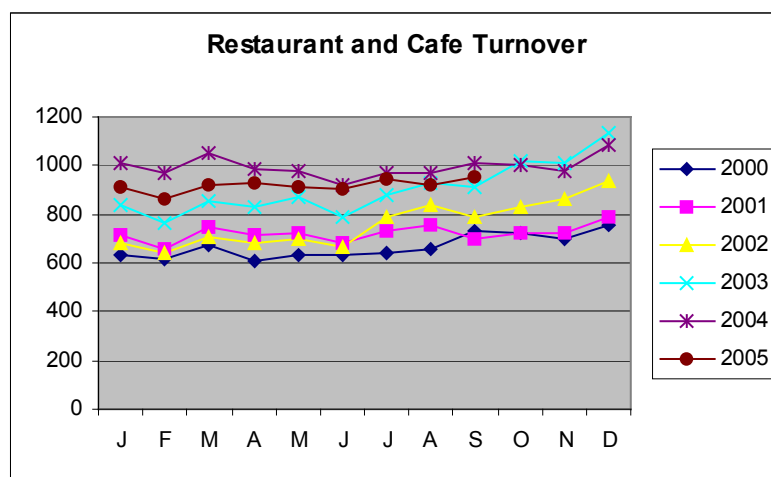


Figure 1- Restaurant Industry Turnover 2000 - 2005

¹ ABS Business Counts, March 2002, Restaurant & Catering Australia

² Cafes and Restaurants Industry Survey, ABS 8655.0

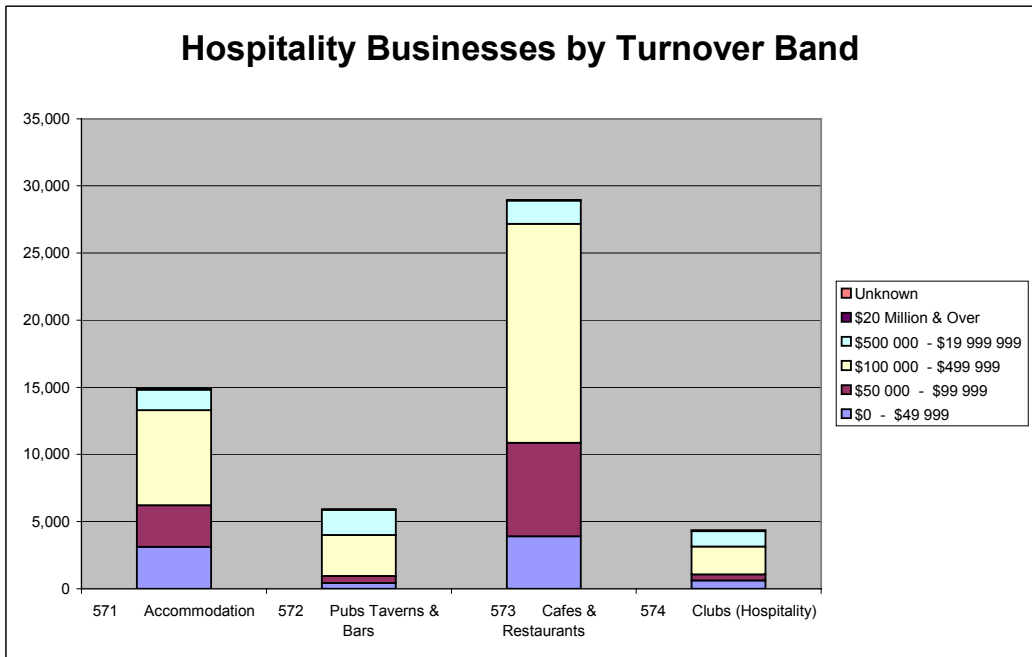


Figure 2 – Hospitality Businesses by Turnover Band, ABS Business Register

In addition to being small businesses, many restaurant and catering businesses are not corporations. As evidenced below, nearly one third of restaurants are operated by sole-traders or partnerships.

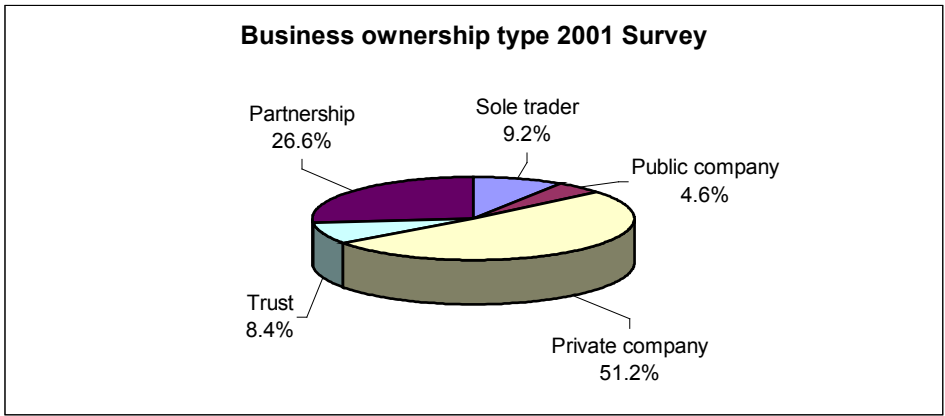


Figure 3 – Business Ownership Type, Restaurant & Catering Operations Report, R&CA, 3rd Edition.

25% of Australian restaurants are located in Victoria, 3% in the ACT and 1% in the Northern Territory.

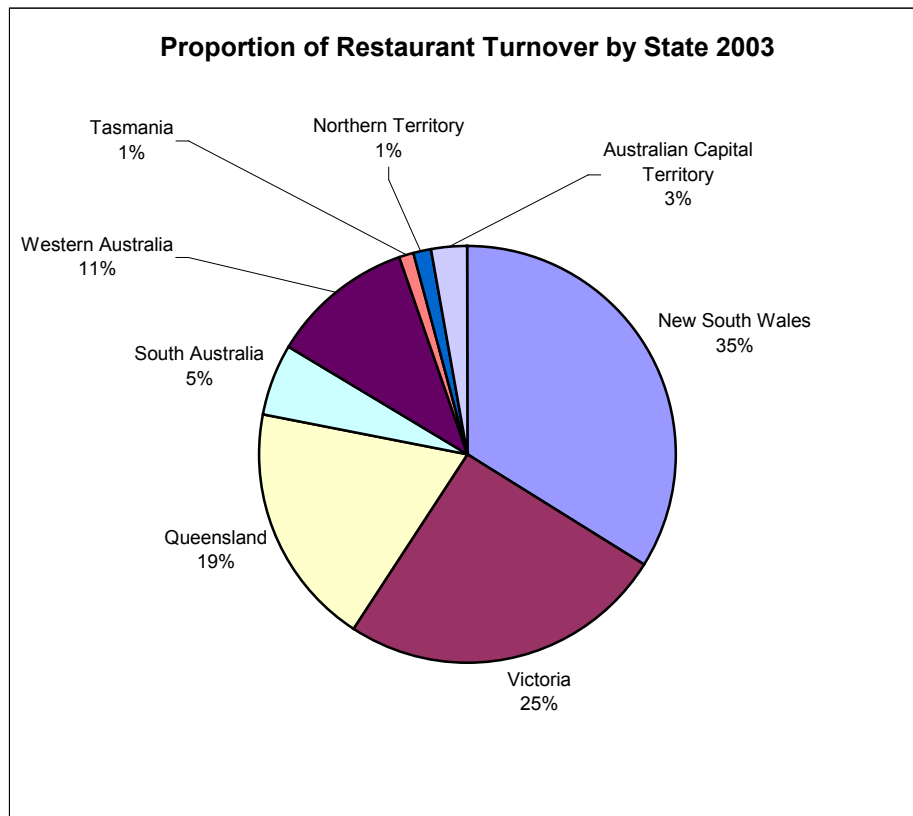


Figure 4 – Proportion of Restaurants by State (based on turnover)

Restaurant Industry Employment

In the November quarter of 2003, 239,000 people were employed in restaurants and cafes in Australia. This represented an 8.1% increase on the number employed 12 months earlier (221,000). In this period the restaurant and café industry accounted for 2.5% of Australia’s workforce and 4.7% of the part time workforce.

Projections for the Restaurant and Café Industry

Accommodation, cafes and restaurants (of which cafes and restaurants are one sector) is projected to be the third fastest growth industry to 2010-2011³. The hospitality industry is projected to grow by 2.4% per annum between now and 2011. This growth will require an additional 12,700 employees per annum, over the next six years.

³ DEWR Job Outlook, June 2004

The Regulatory Burden in the Restaurant Industry

Government regulation has increased in its ranking as a barrier to operating an effective restaurant business. In 1998 17% of respondents rated it as a barrier, by 2003 it had reached 47%. The restaurant and catering industry reports barriers and success factors to operating restaurant and catering businesses in its benchmarking report released every two years. Figure (v) below details the proportion of responses in each area of regulation.

<i>Theme/ Difficulties and obstacles</i>	<i>% of respondents describing factor 2003</i>	<i>% of respondents describing factor 2001</i>	<i>% of respondents describing factor 1998</i>
GST	47%	32%	-
Government regulations	47%	23%	17%
Government taxes and charges	47%	16%	16%
Staff related difficulties	42%	42%	47%
Payroll costs	42%	20%	27%
Competitors	37%	9%	27%
Overall Paperwork	37%	7%	-
Workers compensation/superannuation	32%	4%	8%
Penalty rates / IR	26%	17%	8%
Local Government Council Regulations	26%	5%	-
Operating costs	16%	16%	31%
Unfair dismissal laws	11%	3%	3%
Rent costs	5%	5%	4%
Smoking Regulations	-	3%	-
Long hours	-	3%	4%

Figure 5 – Proportion of responses in regulatory areas

In a recent report by the Office of Small Business, the areas of regulation impacting on restaurant and catering businesses were mapped by the origin of the regulation and the frequency of the task. The outcomes are detailed in Figure 6 below.

Regulation	Area of Government	Ongoing paperwork	Frequency	Fee
Business Name Registration	State	✓	Every 1 or 3 years	✓
Australian Business Number application	Commonwealth		Once only	
Registration Pay as You Go Withholding	Commonwealth		Once only	
Goods and Services Tax Registration	Commonwealth		Once only	
Development approval	Local Govt		On start up; as required	✓
Business Activity Statement	Commonwealth	✓	Monthly/ Quarterly	
Income Tax Return	Commonwealth	✓	Annually	
Tax file number declarations – new employees	Commonwealth	✓	As required	
Superannuation Guarantee	Commonwealth	✓	Remittance quarterly	

Centrelink forms	Commonwealth	✓	As required	
Occupation Health and Safety requirements	State	✓	As required	
Workers compensation	State	✓	Annual renewal	
Liquor Licence	State	Varies	Varies	✓
Food Hygiene licensing/inspections	State/Local Govt	Varies	Varies	✓
Food Hygiene requirements	State/Local Govt			
Agreement to discharge trade waste into sewers.	Local Govt	✓	Varies	✓
Employment Awards	Commonwealth/State			
Apprentice/trainee awards and arrangements	Commonwealth/State	Varies	As required	
Unfair dismissal	Commonwealth/State			

Figure 6 – Areas of Regulation - Office Of Small Business Regulatory Compliance Case Studies Pilot Hospitality Sector

Background

It is understood that the Regulation Taskforce has been asked to identify practical options for alleviating the compliance burden on business from Government regulation. In particular, the Taskforce has been asked to:

- identify specific areas of Commonwealth Government regulation which are unnecessarily burdensome, complex, redundant or duplicate regulations in other jurisdictions;
- indicate those areas in which regulation should be removed or significantly reduced as a matter of priority;
- examine non-regulatory options (including business self-regulation) for achieving desired outcomes and how best to reduce duplication and increase harmonisation within existing regulatory frameworks; and
- provide practical options for alleviating the Commonwealth's 'red tape' burden on business, including family-run and other small businesses.

This submission aims to describe the areas of **the greatest regulatory burden** for restaurant and catering businesses. In addition R&CA has attempted to quantify the burden and proposed solutions.

Areas of Regulation

The areas in which Restaurant & Catering Australia believes that regulatory burden could be lifted from restaurateurs and caterers are:

Superannuation

Restaurant and catering businesses often describe the compliance burden related to the administration of their requirements under the Superannuation Guarantee. The key complaint from businesses about the Superannuation Guarantee was the requirement to make payments for staff who earned as little as \$450 a month. Businesses regarded this threshold as inappropriate because:

- the industry has a transient workforce, with many staff working casually for short periods and then leaving - one restaurant estimated that it employed 200 different people in one year.
- the threshold has not increased while award wages have, which has lowered the effective threshold;
- making very small superannuation payments to many staff is an administrative burden on the business and of questionable value to staff.

The most favoured changes to the system to address this problem were the addition of a time threshold, for example three months, before superannuation became payable or an increase in the dollar value of the threshold.

Restaurant & Catering Australia recommends:

That Government change the current superannuation arrangements such that :-

- The Superannuation Guarantee threshold is raised to \$1800 per quarter (from \$450 per month) and that it be indexed to CPI.
- That superannuation contributions for working holiday makers be contributed to a training and education fund.

Quantification⁴

It is estimated that with 53% of the workforce being casual that restaurateurs would save 5% in their superannuation bill as a result of the raising of the threshold. This would save the average restaurateur \$630 per annum.

Food Safety Regulation

Food safety is regulated through the Food Regulatory Agreement. Regulation is based on national food standards that are enacted by the States / Territories and enforced by Local Government.

Restaurateurs and caterers all regard food safety as being an overly regulated area. The industry does not question the need for food safety but do not agree with the majority of approaches being taken to introduce such regulation. The thrust of regulation is a process based model often referred to as HACCP (Hazard Analysis Critical Control Point). Food Safety Plans are the vehicle through which this approach to food safety is regulated.

Businesses in Victoria are the only foodservice businesses required at this point to have a food safety plan. They indicate that the monitoring and record keeping associated with their Food Safety Plans requires significant resources. In the main they question the effectiveness of the record keeping requirement in ensuring good hygiene practices.

A body of work undertaken by the Commonwealth in 2003-04 shows clearly that there is no cost:benefit to introducing food safety plans for restaurant businesses. It also shows there is marginal benefit to plans for other businesses (such as caterers). What is clear, however, is that food safety is best achieved by training food handlers in basic hygiene skills.

Restaurant & Catering Australia recommends that the FSANZ proposal to implement mandatory food safety plans be changed (as a result of the current further studies and evaluation) and a new approach be developed that encourages food safety plans being developed as best practice or punitive measures and food handler training be mandated.

Quantification⁵

In the OSB study, businesses in Victoria estimated that the ongoing costs of Food Safety Plans were 4 hours per week. This equates as a supervisory wages to approximately \$4,500 per annum. Taken across the industry (if required nationally) Food Safety Plans would cost \$130 Million per annum to main. In contrast mandating food safety training, would cost in the order of \$5.3 Million per annum if every new employee was trained.

Industrial Requirements

As noted above, industrial arrangements are a significant burden on restaurant businesses. This is substantially because restaurants and catering businesses are labour intensive and therefore employment regulation will be of a greater concern to these businesses than the average.

⁴ Quantification of costs are based on very imprecise estimates – They have been included at the request of taskforce members to provide some guidance as to the magnitude of burdens and solutions.

⁵ *Ib id*

This submission does not seek to canvass the level of burden or pose solutions on these matters as they are all being debated in the context of the WorkChoices changes.

It should be noted, however, that, should the issue of sole traders and partners not be addressed through the WorkChoices implementation, effort will need to be made to promote incorporation to these businesses.

GST and the Business Activity Statement

When initially promoted the GST was envisaged to apply to all product, including food. The compromise, introduced through the political process, to exempt food, has created additional complexity.

Restaurant and catering businesses report that accounting systems have made the process of completing the Business Activity Statement (BAS) much simpler. Most businesses remitted GST quarterly (93%), with estimates of the time required to complete the BAS on these occasions ranging from half an hour to two hours.

Businesses were more concerned at the increase in time required to maintain their accounting systems as a result of the GST. Some of the points made were:

- the fact that the GST applies to some food items and not others means businesses have to split invoices into GST and non-GST payments, which is time consuming, particularly for smaller purchases.
- the GST requirements have increased the time required to input data into business accounts.

Restaurant & Catering Australia recommends that Businesses with mixed inputs (such as restaurants, cafes and caterers) should be able to elect to utilise a simplified accounting method that approximates input credits.

Quantification⁶

In a report published by Prof. Jeff Pope in 2002 it was suggested that the cost of compliance for an average sized small business was in the order of 0.45% of turnover. On the basis of ABS data⁷ this would place the average compliance cost for a business the size of an average employing restaurant business (\$558,500) at \$2,513.25 per annum.

Based on data provided to the R&CA, the average restaurateur or caterer spends \$552 per month (or \$6,600 per annum) on GST compliance⁸. It is reasonable to assume that the difference in the two estimates is brought about by the mixed-inputs experienced by restaurants, cafes and caterers.

Training

The administrative arrangements around apprenticeship and traineeship has attracted some attention in the debate over regulatory burden. In a recent report for the National Skills Shortages Strategy⁹ participants in focus groups reported that whilst Registered Training Organisations (RTOs) were doing much of the paperwork on their behalf, there

⁶ Quantification of costs are based on very imprecise estimates – They have been included at the request of taskforce members to provide some guidance as to the magnitude of burdens and solutions.

⁷ Café and Restaurants Industry, Australia, 1998-1999

⁸ Restaurant and Catering Operations Report, 3rd Edition, 2003

⁹ The National Skills Shortage Strategy is a program funded by the Federal Department of Education, Science and Training

was a significant workload in administration of apprenticeship. In some locations participants believe it is a major drawback to recruitment and believed the New Apprenticeships Centres (NACs) were not assisting as much as they could. This is of particular concern for small business owners who lack the resources for managing trainees and apprentices as well as their other employees.

Specific problems reported through the Office of Small Business Regulatory Case studies included:

- difficulty accessing incentive payments - two businesses indicated that they had been deprived of the first incentive payment because earlier studies by the apprentice had been deemed part of the apprenticeship.
- payments where an apprentice was "poached" by another business - businesses claimed that in these circumstances the old employer might be deprived of a payment it deserved, while the new employer got paid without making much contribution to training the apprentice.

Restaurant & Catering Australia suggests a review of the administrative and employer incentive arrangements, surrounding the New Apprenticeship Scheme, with a view to minimising the burden on employers and should be modified to (a) focus on occupations in skill shortage and (b) encourage the retention of an apprentice by the employer who has invested in their training particularly in the first two years.

Fringe Benefits Tax

In the Office Of Small Business Regulatory Compliance Case Studies Pilot Hospitality Sector it was reported that 'A significant proportion of the businesses interviewed objected to the Fringe Benefits Tax (FBT) on business meals, because of the effect it has on their turnover'.

In its 'Committed to Business Statement' in 2004, the Australian Government extend a number of Fringe Benefits Tax (FBT) exemptions to ensure these remain relevant and accessible to small business (e.g. extending the FBT exemption for employer-provided remote area housing and extending the exemption for work-related items such as laptop computers to include portable printers as well as personal digital assistants).

In its Tax Blueprint the Australian Chamber of Commerce and Industry cites FBT as 'the worst of all taxes from a compliance perspective' with 23% of revenue collected being expended on compliance.

The Ralph Review of Business Taxation recommended several reforms to FBT that have never been adopted.

In an Australian National Audit Office report released on the 2 June 2005 titled 'Administration of Fringe Benefits Tax', the Australian Government concluded that 'complying with the requirements of FBT legislation can be relatively complex and resource intensive for many employers including Australian Government public sector entities.'

In the same report the ANAO found that the complexity was such that there is 'an increased risk that entities would not fully meet their FBT obligations'.

GST has dramatically increased FBT compliance cost. The Department of Foreign Affairs and Trade alone paid \$25.7 Million in FBT in 1999-2000 with their FBT compliance increasing 129% as a result of GST¹⁰.

¹⁰ A question on notice, in the Senate, 7 June 2000 to the Minister representing the Minister for Trade.

The current FBT regime is in conflict with the Workplace Relations platform that employee and employer should be able to tailor the relationship to meet their individual needs. Only 8% of agreements contain flexible remuneration arrangements as a result of FBT arrangements¹¹.

Restaurant & Catering Australia believes that the recommendations of the 2000 Review of Business Tax should be adopted and all business meal expenditure should be removed from FBT coverage and made non-deductible¹².

Occupational Health & Safety

In the Workplace Relations Workgroup report for the Restaurant & Catering Industry Action Agenda, it was stated that :

Over regulation in the area of occupational health and safety is also a concern to the <restaurant and catering> industry with the ability for small and medium size businesses to adhere requirements reduced due to the complexity and number of regulations, standards, codes of practices and alike.

A concern also arises over the imbalance between education and prevention and enforcement that exist within some sectors of the system. A preoccupation with prosecution and penalties at the expense of a cultural of mutual responsibility and education and prevention must be overturned.

The importance of education and training cannot be stressed highly enough. Risk management and prevention strategies must be carefully articulated throughout the workplace and operators, particularly in small business who must be supported to ensure their effective implementation

The Office of Small Business Regulatory Compliance Case Studies Pilot Hospitality Sector stated that:

'businesses pointed to the need for better information for businesses on occupational health and safety requirements, stressing the need for information which was targeted to their specific business type (for example, a caterer wanted information specific to catering). A Queensland business said it would be helpful if someone could come and advise the business on what steps it should take.'

The recommendation in the Restaurant & Catering Industry Action Agenda was to promote national consistency in workers' compensation and workplace health and safety laws. The strategies suggested to achieve this were :

- Work actively with industry, industry bodies, governments and other key stakeholders to progress a model for a national framework for workers' compensation that incorporates nationally consistent:
 - premium setting
 - benefit structures
 - insurance regulation and national insurance mechanisms

¹¹ The Supply of Non-Cash Remuneration, Lyons and Ward, UWS, 2005

¹² To confirm the legitimacy of a business expense, it is proposed that the reforms are limited to situations where an ABN is exchanged as part of the transaction, including where the business representative is the holder of a company credit card or where a company has a direct account with a restaurant.

- Work with governments and other key stakeholders to develop more balanced workplace health and safety arrangements that shift the emphasis from enforcement to education and prevention, where employers and employees accept mutual responsibilities
- Develop and promote practical workplace health and safety guidance materials for the industry

Other Areas

In the Office Of Small Business Regulatory Compliance Case Studies Pilot Hospitality Sector several other areas of regulation were mentioned. The content in this section included:

Workers compensation - There was a degree of dissatisfaction with workers' compensation requirements, and especially with the claims process. One business had successfully defeated two claims it considered frivolous, but at considerable cost. Another business complained that claims resulting from an armed robbery had led to a 25 per cent increase in premiums, even though, as the business perceived it, the event was clearly not its fault.

Council regulation - There was considerable variation in attitudes to Local Government, but overall council regulation was not a major issue for the businesses interviewed. A number of businesses complained that fees charged by councils for footpath dining or signage were basically revenue raising and were not justified.

Liquor licensing - Some New South Wales businesses considered that the cost (\$5,000 to \$15,000) of a "Dine and Drink" licence allowing customers to drink without dining in New South Wales, was too expensive for many small businesses to consider. One business noted they regularly had to refuse customers service of alcohol, due to this regulation.

Centrelink forms - While most businesses interviewed had been required to complete Employment Verification Reports, or Employment Separation Certificates for Centrelink, they were not widely perceived to be a significant burden. Two businesses expressed concern about the forms. One said it had been asked to provide the same information on the same employees many times over, while the other had difficulty providing detailed historical information on an ex-employee's wages.

Fees for background music - The requirement to pay fees in order to play recorded music was identified as a significant annoyance by 2 of the businesses interviewed. While not a significant cost, it was seen as unjustified that businesses such as restaurants should have to pay to play a CD they have already purchased.

Business Entry Point - One business in process of setting up had used the Business Entry Point as a source of information and had attempted to use the site to apply online for the Australian Business Number and other tax registrations. The business owner suggested that it would be helpful to have more up front information about the circumstances in which a business needs to apply for various registrations, and the information which will be needed to complete the application. Investigation showed that the Australian Business Register site does include the relevant information.