

1 September 2020

By Email: futureofwork@parliament.nsw.gov.au

Dear Sir/Madam,

**RE: SELECT COMMITTEE ON THE IMPACT OF TECHNOLOGICAL AND
OTHER CHANGE ON THE FUTURE OF WORK AND WORKERS IN NEW
SOUTH WALES**

We refer to the above media release issued by the Select Committee on the Impact of Technological Change on the Future of Work and Workers in New South Wales (the “**Committee**”). The Committee has invited submissions on the Terms of Reference raised in the media release by Monday, 31 August 2020. Restaurant and Catering Industry Association (“**R&CA**”) is pleased to file 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.

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.” 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.

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 21st 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. 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;
4. Allowing Australia to remain economically competitive both globally and internationally, rather than relying on outsourcing;
5. 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 Victor Song (Senior Adviser – Industrial Relations and Policy) by email on victors@restaurantcater.asn.au

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

Regards,

A handwritten signature in black ink, appearing to be 'Wes Lambert', written in a cursive style.

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