



# Restaurant & Catering

**Treasury**

**Strengthening protections against unfair contracts terms**

**Submission**

**20 September 2021**

## **The Restaurant and Catering Industry Association**

1. Restaurant & Catering Industry Association (the “**R&CA**”) welcomes the opportunity to make a submission in relation to strengthening protections for consumers and small businesses against unfair contract terms. The 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.
2. In the restaurants, café and catering sector, over 92 percent of businesses employ less than 19 people or less. The hospitality industry has its foundation in small businesses throughout Australia. It is also an opportunity for migrant communities and everyday Australians to share the cuisines from their culture while sustaining their livelihoods in Australia. It is these small businesses that R&CA advocates for and are often the most impacted, when unfair contract terms are imposed upon them.
3. The 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. The 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.

### **R&CA’s position**

4. The R&CA supports the proposed reforms to make unfair contract terms unlawful and to give courts the power to impose a civil penalty. The R&CA also supports the courts’ ability to consider more flexible and appropriate remedies when a contract term is declared unfair, rather than a term being declared automatically void.
5. This includes the streamlining of the courts powers to make order to void, vary or refuse part or all of a contract allows for more appropriate remedies whenever a dispute about an unfair contract arises.

## Eligibility Threshold

6. The R&CA's supports the increase of the eligibility threshold for the protections from less than 20 employees to less than 100 employees. This increase in the eligibility threshold is important as it aligns with the definition of 'small proprietary company' in the Corporations Act 2001 as administered by ASIC where a company that controls "fewer than 100 employees" is a factor in determining this.
7. This alignment provides consistency across different departments and greater assurance for small businesses in the hospitality sector when they are interacting with different government agencies.
8. Smaller businesses in hospitality often face multiple challenges when the owner-operator who founded their businesses on a vision of food service often maintain multiple roles within their business. Without economies of scale of a larger workforce, it is common for owner-operators to also be involved with the juggling the cooking duties, financial decision-making, lease negotiation with landlords and human resources functions.
9. The broadening of this definition of small business by increasing the threshold for employees more accurately captures the reality of small business and scalability. This ensures that small businesses who have over the 20 employees and are under the 100 threshold are also protected from unfair contract terms that are imposed on them.
10. However, R&CA notes that the introduction of an annual turnover threshold of less than \$10 million as an alternative threshold for determining eligibility as part of these reforms.
11. R&CA submits that this threshold figure be increased to \$50 million. This aligns with the small business entity turnover threshold when the government increased the aggregated turnover to \$50 million per annum for fringe benefits tax concession from 1 April 2021. Further, ASIC's definition of 'small proprietary company' also considered the consolidated revenue for the financial year as less than \$50 million.
12. In order to remain consistent across government entities and reporting obligations, the R&CA submits that the annual turnover threshold be increased to \$50 million for defining small businesses in relation to protections against unfair contract terms. This increase in threshold would ensure that more small

businesses are protected by these provisions and be eligible for legal remedies where unfair contract terms are used against them.

### **Removal of upfront price payable**

13. The R&CA's supports the removal of the requirement for the upfront price payable under a contract to be below a certain threshold in order to be covered by unfair contract term protections. R&CA supports the removal of this onerous requirement as it provides further protections for small businesses
14. Small businesses are engaged in contracts of varying upfront prices and the requirement to be below a certain threshold would have placed small businesses in a vulnerable position. Protections only below a certain threshold would have been counter-intuitive and this removal is welcomed as a common sense approach to protecting small businesses from unfair contract terms regardless of the indicative upfront price payable.

### **Conclusion**

15. The R&CA's supports measures which increase the eligibility for small businesses to seek remedies where unfair contract terms are used against them. Reforms to increase the eligibility criteria and reduce onerous requirements in order to be covered by unfair contract term protections is welcomed as it ensures that more small businesses in the hospitality sector will be protected.
16. We thank the Treasury for considering our submission. If you wish to discuss R&CA's views further, do not hesitate to contact the Industrial Relations and Legal Policy Department by email on [ir@rca.asn.au](mailto:ir@rca.asn.au) or on 1300 722 878.

Regards

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Chief Executive Officer

Restaurant and Catering Australia