



FairWork
Commission

18 December 2015

Mr Matteo Pignatelli
President
Restaurant & Catering Industrial
Level 3, 154 Pacific Highway
ST LEONARDS NSW 2065

via email: info@restaurantcater.asn.au
jhart@restaurantcater.asn.au

Dear Mr Pignatelli

Section 271 applications for exemption from the financial reporting obligations of Part 3 of Chapter 8 of the Fair Work (Registered Organisations) Act 2009 for financial years ended 30 June 2015 (FR2015/150)

I refer to your applications pursuant to s271 of the *Fair Work (Registered Organisations) Act 2009* (RO Act), lodged in the Fair Work Commission (FWC) on 12 August 2015 in respect of the Restaurant & Catering Industrial (RCI) for the financial year ended 30 June 2015.

I am satisfied that the RCI is a reporting unit and that it did not have any financial affairs in the financial year which ended 30 June 2015. The attached certificates reflect this decision.

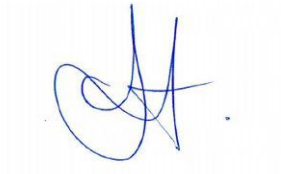
I note that the amended copies of the 2013 and 2014 financial reports for the RCI were provided to the FWC on the 30 November 2015. These amended financial reports adequately addressed the outstanding compliance issues and were subsequently filed on 3 December 2015.

I would like to take this opportunity to remind the RCI that any future application pursuant to s271 of the RO Act must address the following:

- Does the reporting unit maintain a bank account?
- Does the reporting unit hold money in cash?
- Did the reporting unit receive any revenue during the financial year?
- Did the reporting unit expend any money during the financial year?
- Did the reporting unit incur any liabilities during the financial year?
- Did another reporting unit receive money or incur financial obligations so that the reporting unit could conduct its activities? If so, which reporting unit and provide details of the arrangement.
- Did another person, body corporate or trust receive money or incur financial obligations so that the applicant reporting unit could conduct its activities? If so, provide details of the arrangement and evidence which demonstrates that entities compliance with its requirements and obligation under its incorporation.

If you wish to discuss this matter, please contact Ms Joanne Fenwick on 03) 8656 4681 or by email to joanne.fenwick@fwc.gov.au.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'CE', enclosed within a rectangular border.

Chris Enright
Director
Regulatory Compliance Branch



CERTIFICATE

Fair Work (Registered Organisations) Act 2009

s.271 - Reporting unit's exemption from requirements of Chapter 8, Part 3

Restaurant & Catering Industrial
(FR2015/150)

MR ENRIGHT

MELBOURNE, 18 DECEMBER 2015

Certificate of exemption from the requirements of Chapter 8, Part 3 of the Fair Work (Registered Organisations) Act 2009

[1] On 12 August 2015 an application was made under s 271 (1) of the *Fair Work (Registered Organisations) Act 2009* (the Act) by the Restaurant & Catering Industrial (the Organisation) for a certificate of exemption in respect of the financial year ended 30 June 2015.

[2] In previous years the Organisation has lodged a full report with the Commission as per the requirements under s 253 of the Act. Due to the Organisation's arrangement and relationship with Restaurant & Catering Industry Association of Australia Inc., the Organisation has handed over control and management of its funds to them.

[3] The Restaurant & Catering Industry Association of Australia Inc. is registered under the *Association Incorporation Act 1991 (ACT)*. An entity registered under this Act is required to prepare a statement of the association's accounts, have those accounts audited, presented those accounts to an annual general meeting of members within 5 months after the end of the financial year and have those accounts lodged with the registrar-general within 6 months after the end of the financial year.

[4] On the basis of the material provided in the application, I am satisfied that the applicant is a reporting unit that does not have any financial affairs in respect of the financial year which ended 30 June 2015.



DELEGATE OF THE GENERAL MANAGER

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16 October 2015

Mr John Hart
Director
Restaurant & Catering Industrial
Level 3, 154 Pacific Highway
St Leonards NSW 2065

via email: jhart@restaurantcater.asn.au

Dear Mr Hart,

Application by Restaurant & Catering Industrial (RCI) for a certificate under s 271 of the Fair Work (Registered Organisations) Act 2009 (the RO Act) - FR2015/150

Thank you for your response on the 24 September 2015 to my letter dated 23 September 2015.

I note your comments about the requirements or otherwise of an application under s 271 of the Fair Work (Registered Organisations) Act 2009 (the RO Act) to be made by a designated officer. The Regulatory Branch of the Fair Work Commission (FWC) is committed to assisting organisations achieve high levels of voluntary compliance and while I acknowledge Mr Pignatelli has signed the revised application, I hope it might assist you if I explain my thinking on this issue. Also this letter sets out my thinking regarding future s 271 applications to ensure that they are processed with efficiency and hopefully with a reduction in the regulatory burden.

Authority to make an application under s 271

I agree that the RO act does not explicitly state that an application made under s 271 must be made by a designated officer. However I refer you to Regulation 13(2)(a) of the *Fair Work (Registered Organisations) Regulations 2009* (RO Regs). Regulation 13(2) states that 'an application or notice lodged with the FWC must:

- (a) *if lodged by an organisation – be under the common seal of the organisation or be signed by a person authorised to sign the application or notice.*

Subject to the provisions of the RO Act, the Rules of an organisation establish authorities and powers, including who is authorised to make applications on behalf of the registered organisation. Rules 11, 12 and 13 of the RCI deal with the management, Officers and duties of Officers and Director and Rule 18 deals with execution of documents.

Rule 11 states that the management of the Association is vested in the Executive Council and states that the Council '*...may exercise all such powers and do all such acts and things as may be exercised or done by the Association and are not expressly directed or required to be exercised or done by the Association in an Annual General or Special General Meeting*'.

Rule 12 identifies the Officers of the Association as the President, Vice Presidents (2) and Treasurer.

Rule 13, which identifies the duties of Officers and Director, states that '*the President shall in all official relations of the Association take precedence over all other members.*' This function can be performed by the Vice Presidents if the President is not available and has subsequently nominated a Vice President to perform all or part of the functions.

Relevantly Rule 13 states that '*the Treasurer shall keep or cause to be kept the accounts of the Association and shall do all such other things and acts as are required by these Rules, the Workplace Relations Act 1996 or by any successor thereto or by resolution of the Executive Council to be done by the Treasurer.*'

Although the duties of the Director provide that the Director is responsible for the general administration of the Association included charge of all books and keeping records and papers, it

does not indicate that the Director has the authority to execute the powers of the Association. The Annual Return recently lodged with the FWC does not list the Director as an Officer of the RCI or a member of the Executive Council and Rule 12 does not list the Director as an Officer.

In my view Rules 11, 12 and 13 provide that the power to make any applications that relate to the accounts of the organisation, including a s.271 application, rests with the Treasurer, not the Director. This reading fits with overall objectives of the RO Act which aim, among other things, to provide for '*the democratic functioning and control*' of the organisation (s 5(3)(d)) such that management powers lie with elected officers (s 9).

However, this is subject to Rule 18 which provides that '*any document shall be executed by or on behalf of the Association in such form and in such manner as the Executive Council may determine.*' This suggests that if the Executive Council (an elected body of officers in which overall management of the Association is vested) so determines an application can be executed by anyone it so authorises.

Having regard to this framework, it is the view of the FWC that the Treasurer is the officer of the RCI with the authority to lodge an application under section 271. However should the Executive Council so determine, another person may be authorised. I am not aware of any such authorisation.

Future s.271 applications

As you acknowledged in your letter, the standard set out in the RO Act under section 5(3)(e) is to '*facilitate the registration of a diverse range of employer and employee organisations*'. The FWC understands that registered organisations can and do operate under various arrangements and structures. Taking that into consideration, the FWC considers it prudent that as the Regulator this must be balanced by ensuring that members of all registered organisations have access to information about the performance and management of the organisation and have the ability to contribute and participate in the operations of the organisation.

I understand that under the *Association Incorporation Act 1991 (ACT)*, an entity registered under this Act is required to prepare a statement of the association's accounts, have those accounts audited, presented those accounts to an annual general meeting of members within 5 months after the end of the financial year and have those accounts lodged with the registrar-general within 6 months after the end of the financial year.

In the event that the RCI proposes to make future applications under s 271, it would be of assistance for the RCI to provide evidence which demonstrates compliance with the requirements set out in Part 5 of the *Association Incorporation Act 1991 (ACT)*.

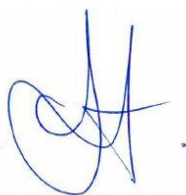
The reason I refer to that evidence now is to ensure that future applications under s 271 are processed with efficiency and hopefully with a reduction in the regulatory burden.

Finally, thank you for the update on the progress of the 2013 and 2014 financial reports. It is noted that the FWC can expect to receive these reports by the end of this month.

Once the FWC has determined that the compliance issues within these financial reports have been adequately address and remedied, the FWC will be in a position to proceed with the finalisation of this s 271 application.

In the meantime, if you have any questions or would like to discuss the matter further, please contact Ms Joanne Fenwick on 03) 8661 7886 or by email joanne.fenwick@fwc.gov.au.

Yours Sincerely

A handwritten signature in blue ink, appearing to be 'CE', with a stylized flourish at the end.

Chris Enright - Director

**Regulatory Compliance Branch
Fair Work Commission**



Restaurant
& Catering

24 September 2015

Mr Chris Enright
Director
Regulatory Compliance Branch
Fair Work Commission
GPO Box 1994
MELBOURNE VIC 3001

SAVOUR
AUSTRALIA



Dear Mr Enright

Thank you for your letter of the 23rd September.

To each of the points you raise in turn.

Designated Officer

In contrast to other requirements under the Fair Work (Registered Organisations) Act 2009, which specifically require that the application be made by a designated officer, it is not specifically stated that a section 271 application must be signed by a designated officer of the reporting unit. Whilst this is the case, please find the attached revised application signed by Mr Pignatelli.

Required information within section 271 applications

The attached revised application spells out the information requested previously. The additional requirements of your letter of the 23rd September are addressed in the table below.

Question	Answer
Does the reporting unit maintain a bank account?	No, Restaurant & Catering Industrial does not have a bank account.
Does the reporting unit hold money in cash?	No, Restaurant & Catering Industrial does not hold any cash.
Did the reporting unit receive any revenue during the financial year?	No, Restaurant & Catering Industrial did not receive any revenue in the FY15 Financial Year.
Did the reporting unit expend any money during the financial year?	No, Restaurant & Catering Industrial did not expend any money in the FY 15 Financial Year.
Did the reporting unit incur any liabilities during the financial year?	No, Restaurant & Catering Industrial did not incur any liabilities in the FY15 Financial Year.
Did another reporting unit receive money or incur financial obligations so that the reporting unit could conduct its	Restaurant & Catering Industry Association of Australia Inc (an Association Incorporated in the ACT) receives membership dues from

activities? If so, which reporting unit and provide details of the arrangement.	Association members that resource the conduct of the affairs of Restaurant & Catering Industrial.
Did another person, body corporate or trust receive money or incur financial obligations so that the applicant reporting unit could conduct its activities? If so, provide details of the arrangement.	Restaurant & Catering Industry Association of Australia Inc meets its reporting, auditing and disclosure requirements as an Association Incorporated in the ACT.

The Intentions of the Fair Work (Registered Organisations) Act 2009 (the RO Act)

In considering whether our Section 271 application should be approved, I would ask you to specifically consider Section 5 3(e) of the RO Act, which describes the intention to 'facilitate the registration of a diverse range of employer and employee organisations'. As you are aware the construct of the relationship between Restaurant & Catering Industrial and the Restaurant & Catering Industry Association of Australia Inc is specifically designed to meet the needs of the restaurant and catering industry in the newly formed national industrial relations regulatory environment. The principle of the 'diversity' mentioned in 5 3(e) appears to demonstrate the intention to facilitate the registration of different structures such as that our industry has adopted.

The accountability, participation, democracy and efficient management principles annunciated in the other parts of 5 3 are dealt with, in the RCI case, by requirements of the Associations Incorporations Act 1991 (ACT) and the Association's constitution that is approved under that Act.

Previous financial reports

The Associations' auditors have been asked to redraft the financial reports as requested. Unfortunately the request for the revisions were made at a time coincident with the end of financial year. This has meant that the auditor has been unable to turn their attention to the redrafting immediately. It is expected these reports will be available by the end of October 2015.

I trust this addresses all of the questions raised.

Yours sincerely



John Hart
Director



Restaurant
& Catering



24 September 2015

General Manager
Fair Work Commission
GPO Box 1994
MELBOURNE VIC 3001

Via email: orgs@fwc.gov.au

Dear Ms O'Neill

RE: *Fair Work (Registered Organisations) Act 2009* – Application for Certificate

We make the following representations with respect to the application for exemption pursuant to s271(1) of the *Fair Work (Registered Organisations) Act 2009* for Restaurant & Catering Industrial for the financial year ended 30 June 2014.

Restaurant & Catering Industrial did not hold an interest in any real property or personal property for the financial year ended 30 June 2014.

Restaurant & Catering Industrial did not have any financial affairs in the financial year.

Restaurant & Catering Industrial does not act as trustee in any form.

Restaurant & Catering Industrial does not have any funds under rule 7 Subscription and Levies of the registered rules of Restaurant & Catering Industrial.

The members of the Restaurant & Catering Industrial pay levies under the rules of the organisation to Restaurant & Catering Industry Association of Australia Inc (ABN 73 080 269 905) trading as Restaurant & Catering Australia.

Restaurant & Catering Industrial has elected to allow Restaurant & Catering Industry Association of Australia Inc (ABN 73 080 269 905) trading as Restaurant & Catering Australia to retain the total of subscription fees collected by the Restaurant & Catering Industrial. Therefore, the Restaurant & Catering Industry Association of Australia Inc (ABN 73 080 269 905) trading as Restaurant & Catering Australia retains the total of fees received for the Restaurant & Catering Industrial and relies on Restaurant & Catering Industry Association of Australia Inc (ABN 73 080 269 905) trading as Restaurant & Catering Australia to complete administrative and/or secretarial duties.

Restaurant & Catering Industrial has not secured any funds to discharge its obligations.

RESTAURANT & CATERING INDUSTRIAL
ABN 31 739 604 819

Level 3, 154 Pacific Highway St Leonards NSW 2065
T: 1300 722 878 F: 1300 722 396

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The Restaurant & Catering Industrial did not produce financial accounts for the last financial year.

It can be concluded that Restaurant & Catering Industry Association of Australia Inc (ABN 73 080 269 905) trading as Restaurant & Catering Australia has effective control over the funds of the Restaurant & Catering Industrial with respect to the management of funds.

Yours sincerely

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

Matteo Pignatelli
President

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Restaurant
& Catering

SAVOUR
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21 September 2015

General Manager
Fair Work Commission
GPO Box 1994
MELBOURNE VIC 3001

Via email: orgs@fwc.gov.au

Dear Ms O'Neill

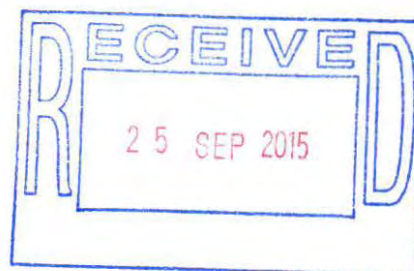
RE: *Fair Work (Registered Organisations) Act 2009* – Application for Certificate

Further to our correspondence dated 4 August 2015 please note that a typographical error occurred and all references to the financial year ended "30 June 2014" should be replaced with "30 June 2015".

The exemption sought under s.271 in all other respects remains the same.

Yours sincerely

John Hart
Director



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23 September 2015

Mr John Hart
Director
Restaurant & Catering Industrial
Level 3, 154 Pacific Highway
St Leonards NSW 2065

via email: jhart@restaurantcater.asn.au

Dear Mr Hart,

Application by Restaurant & Catering Industrial for a certificate under s 271 of the *Fair Work (Registered Organisations) Act 2009* (the RO Act) - FR2015/150

I refer to your application for an exemption pursuant to section 271(1) of the RO Act for the Restaurant & Catering Industrial (RCI) for the financial year ended 30 June 2015 which was lodged with the Fair Work Commission (FWC) on the 12 August 2015.

The purpose of this correspondence is to advise you that as the Delegate of the General Manager, I propose to carefully consider this application and the circumstances in which it has been made. During an initial review of the application, a range of issues have been identified and listed below, which require further attention.

Designated officer

A section 271 application must be signed by a designated officer of the reporting unit and section 243 of the RO Act defines a designated officer. The most recent Annual Return of the RCI, which was lodged with the FWC on 23 March 2015, does not identify either you or your position as an officer of the RCI.

I advise that it will be necessary for an amended section 271 application to be lodged with the FWC signed by an officer who satisfies the meaning of a designated officer as per section 243 of the RO Act.

Required information within section 271 applications

The FWC and RCI met on 21 July 2015 to discuss a range of issues including the option of the RCI submitting a section 271 application. Advice was provided during that meeting that the FWC was seeking further clarification on the operations of section 271. Since that meeting further clarification has been obtained and a review of the internal processes in relation to the application and operation of section 271 has occurred. The review of internal process focussed on the information that must be provided when a reporting unit submits an application for a section 271 certificate. Based on this, as a minimum the FWC expects the following question to be addressed in all future section 271 applications:

- Does the reporting unit maintain a bank account?
- Does the reporting unit hold money in cash?
- Did the reporting unit receive any revenue during the financial year?
- Did the reporting unit expend any money during the financial year?
- Did the reporting unit incur any liabilities during the financial year?

- Did another reporting unit receive money or incur financial obligations so that the reporting unit could conduct its activities? If so, which reporting unit and provide details of the arrangement.
- Did another person, body corporate or trust receive money or incur financial obligations so that the applicant reporting unit could conduct its activities? If so, provide details of the arrangement.

The application submitted by the RCI covers most of the new information requirements however please ensure that the amended application adequately responds to the questions set out above.

Further information required

In assessing a section 271 application it is appropriate to take into account the intentions and objectives of the Parliament referred to in the RO Act in determining whether the granting of an exemption from Part 3, Chapter 8 of the RO Act will have an adverse impact on the information available and disclosed to members.

Section 5 of the RO Act sets out Parliament's intention in enacting this Act. In particular subsection 5(3) states that '*the standards set out in this Act:*

- (a) ensure that employer and employee organisations registered under the Act are representative of and accountable to their members, and are able to operate effectively; and*
- (b) encourage members to participate in the affairs of organisations to which they belong; and*
- (c) encourage the efficient management of organisations and high standards of accountability of organisations to their members; and*
- (d) provide for the democratic functioning and control of organisations; and*
- (e) facilitate the registration of a diverse range of employer and employee organisations'.*

As described in the application, RCI has elected to allow the Restaurant & Catering Industry Association of Australia Inc. trading as Restaurant & Catering Australia (RCA) to collect and retain the total fees received for the RCI and relies on the RCA to complete administrative and/or secretarial duties. In these circumstances, I am required to consider how the RCI is meeting the Parliament's intentions and objectives considering the outsourcing of the financial and administrative control to a third party.

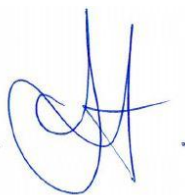
In order to adequately assess this application, I request that the RCI provide further information in relation to how it considers it is meeting its obligations under the RO Act, in particular to the standards set out in subsection 5(3)(b) and 5(3)(c) above.

Previous financial reports

I also note that the non-compliance issues identified in the 2013 and 2014 financial reports remain outstanding. Please provide an update on the progress and a timeline in which the RCI will rectify these issues.

In the meantime, if you have any questions or would like to discuss the matter further, please contact Ms Joanne Fenwick on 03) 8661 7886 or by email joanne.fenwick@fwc.gov.au.

Yours Sincerely



Chris Enright

**Director
Regulatory Compliance Branch
Fair Work Commission**



Restaurant
& Catering



4 August 2015

General Manager
Fair Work Commission
GPO Box 1994
MELBOURNE VIC 3001

Via email: orgs@fwc.gov.au

Dear Ms O'Neill

RE: *Fair Work (Registered Organisations) Act 2009* – Application for Certificate

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Restaurant & Catering Industrial has not secured any funds to discharge its obligations.

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Yours sincerely

John Hart
Director

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