

ACT Compliance Report

Outcomes from the Fair Work Ombudsman's
ACT Compliance Monitoring Campaign



Australian Government

Fair Work
OMBUDSMAN

ACT COMPLIANCE MONITORING CAMPAIGN

WHAT DID WE FIND?



80% of businesses compliant with pay slip & record-keeping obligations



74% of businesses paying their employees correctly



60% of businesses compliant with all requirements



\$31 087 recovered for 120 employees from 18 businesses

WHERE DID WE GO?

Re-visiting businesses that have previously been found non-compliant from past campaigns

**80 BUSINESSES
AUDITED**



ENFORCEMENT OUTCOMES



17

FORMAL
CAUTIONS



8

INFRINGEMENT
NOTICES



1

COMPLIANCE
NOTICE



2

LITIGATIONS



Summary

The Fair Work Ombudsman (FWO) undertook a compliance monitoring campaign (the campaign), which focussed on businesses in the ACT that were previously subject to an audit and found to be non-compliant.

Committed to creating a culture of compliance with Australian workplace laws, the FWO undertakes education and compliance campaigns to assist businesses comply with workplace laws.

The campaign was initiated due to high levels of non-compliance found during the previous FWO activities, namely:

- national hospitality industry – wave 3 campaign: - 71% non-compliance rate in the ACT
- national hair & beauty campaign - ACT had a non-compliance rate of greater than 50%
- northern ACT regional campaign - 43% non-compliance rate
- ACT restaurant industry audit program - 59% non-compliance rate.

For this compliance monitoring campaign, 80 businesses previously found to be non-compliant with workplace laws were audited with the following results:

- 64 (80%) businesses were compliant with record-keeping and pay slip requirements
- 59 (74%) businesses were paying their employees correctly
- 48 (60%) businesses were compliant with all requirements
- \$31 087 was recovered from 18 businesses on behalf of 120 employees
- 17 formal cautions, eight infringement notices and one compliance notice were issued
- two litigations were filed.



What we did

Fair Work Inspectors (Inspectors) audited businesses in the ACT that had previously been found to be non-compliant. Particular attention was paid to those businesses that were previously subject to enforcement action, such as receiving a formal caution or being issued an infringement notice.

Inspectors obtained a sample of time and wage records and assessed compliance with the *Fair Work Act 2009* (the Act), the *Fair Work Regulations 2009* (the Regulations) and the applicable award or agreement.

Where breaches were identified, Inspectors determined the most appropriate compliance and enforcement outcome based on the reasons for the non-compliance.

The most common modern awards applicable to businesses in the region were:

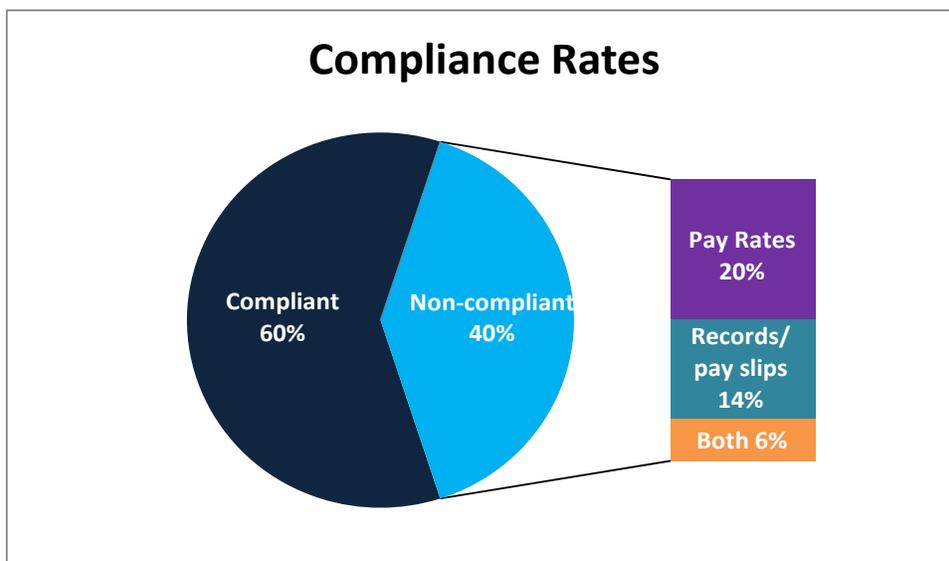
- *General Retail Industry Award 2010*
- *Hospitality Industry (General) Award 2010*
- *Restaurant Industry Award 2010*
- *Hair and Beauty Industry Award 2010*
- *Building and Construction General On-Site Award 2010.*

As part of the campaign, businesses were provided with information and resources to help them comply with their obligations under Australian workplace laws. In particular, businesses were provided with the online resources freely available on the FWO website www.fairwork.gov.au, including [pay rates](#), [hiring employees](#), [My account](#) and [online training courses](#).



Findings

Figure 1 – Compliance rates



Of the 80 businesses audited:

- 48 (60%) businesses were compliant with all requirements
- 32 (40%) businesses had at least one breach:
 - 16 (20%) had breaches relating to pay rates
 - 11 (14%) had breaches relating to pay slips or record-keeping
 - five (6%) had both pay rates and record / pay slip breaches.
- 64 (80%) businesses were compliant with record-keeping and pay slip requirements
- 59 (74%) businesses were paying their employees correctly
- \$31 087 was recovered from 18 businesses on behalf of 120 employees
- compliance and enforcement outcomes were recorded against 28 businesses, with:
 - 17 formal cautions issued
 - 8 infringement notices issued
 - 1 compliance notice issued
 - 2 litigations commenced.



Compliance and enforcement

Seventeen formal cautions were issued. Formal cautions are issued when the FWO has found non-compliance. The written warning puts a business on notice that future non-compliance could result in the FWO seeking financial penalties. If the FWO becomes aware of any further instances of non-compliance, the fact that the business was issued with a formal caution will be taken into account in deciding whether to commence civil proceedings against the business, and it may be used as evidence in any penalty determinations.

Case study – Formal caution

An inspector identified an underpayment for a casual employee from a selected restaurant. The business had only five employees and four of them were permanent.

In this instance it was found that the casual employee was not receiving their casual loading as prescribed in the *Restaurant Industry Award 2010* (the Award). The employer had not realised that there was a difference between permanent and casual employment and paid the casual employee the same as the rest of the employees.

In addition, as the casual employee was working set hours, the employer failed to record their hours of work. The employer was co-operative and rectified a minor underpayment of \$266 as the staff member had only recently commenced their employment.

The inspector provided information to the employer on the different employment classifications and pay rates from the Award. A formal caution was issued on the business.

Eight infringement notices were issued. An infringement notice is a fine given to a business for non-compliance with record-keeping or pay slip requirements of the Act and the Regulations. A total of \$1610 in infringement notices was issued during the campaign.

Case study – Infringement notice

A Fair Work Inspector audited a local restaurant that had previously been found non-compliant in relation to pay slip requirements. The business had received advice and assistance from the FWO on this matter.

The business employed eight employees who were covered by the *Restaurant Industry Award 2010* (the Award). All employees received their correct minimum entitlements as per the Award, however the pay slips failed to meet the content requirements as stipulated in the Regulations.

As the employer had failed to address the issue from the previous audit and continued to issue non-compliant pay slips after receiving advice from the FWO, the inspector issued a \$180 infringement notice.

One compliance notice was issued. A compliance notice is a written notice legally requiring a business to rectify breaches of the Act. Failure to comply with a compliance notice results in the

FWO commencing legal proceedings. A total of \$5206 was recovered from one business for 22 employees as a result of the compliance notice issued.

Case study – Compliance notice

A restaurant that the FWO had previously audited and provided advice and assistance to was selected for a follow up audit. It was a larger business that employed 28 casual employees.

On reviewing the sample of records provided, the inspector conducting the audit noted that some casual employees were not receiving the correct rate of pay as per the *Restaurant Industry Award 2010* (the Award). The inspector notified the employer, provided them with the correct rates and directed the business to conduct calculations for all employees for a period.

Calculations were provided and reviewed. It was found that 22 of the employees had been underpaid. The remaining six had received their minimum entitlements as per the Award as they were paid a higher rate in senior positions. The employer thought the rates being paid were adequate, but had not checked the Award.

In total, a gross amount of \$5206 was owed to 22 employees. The employer fully complied with the compliance notice and made the required back payments.

The FWO commenced proceedings against two companies, [Global Trading and Investment Group Pty Ltd](#) and [Yang Brothers Investment Pty Ltd](#).

The FWO commences legal proceedings in instances where there is both sufficient evidence and public interest. Litigation is the most significant enforcement tool used by the FWO and is reserved for matters involving allegations of serious non-compliance and where a penalty is considered warranted.

Case study – Litigation

During an audit, Inspectors interviewed four casual employees employed by a cafe. These employees provided information which raised concerns about breaches of the Act.

Following an investigation by Inspectors, the FWO commenced legal proceedings in the Federal Circuit Court of Australia. The FWO alleged that the business failed to keep required records of amounts paid to the employees and failed to make a record of hours worked by the casual employees. The FWO also alleged that the business failed to issue some employees with pay slips, and that pay slips issued to one employee were not issued within the required timeframe and did not include all of the information required by law. The FWO alleged that the director of the business at the relevant time was involved in the alleged contraventions.

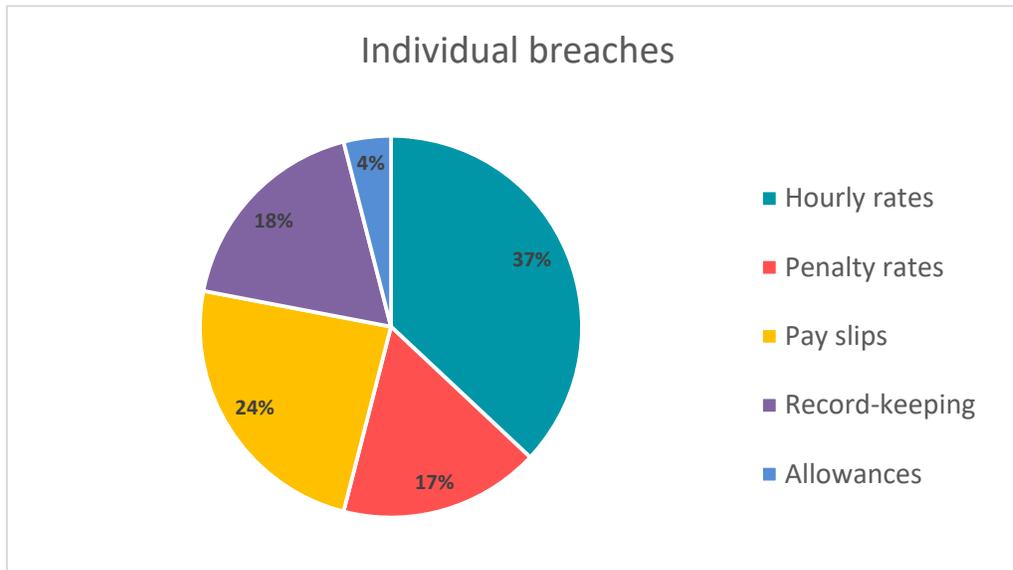
The business and the former director admitted the alleged contraventions. On 27 November 2017, the Court imposed penalties of \$47 000 on the business and \$9800 on the former director. These penalties included a discount for admissions and co-operation. In imposing penalties, the court considered it significant that the director had interacted with the FWO's predecessor in relation to alleged compliance issues at another of his businesses.



Breaches

The 32 businesses that were found to be non-compliant had a total of 47 breaches. The most common breaches related to underpayment of hourly rate (37%), pay slips (24%) and record-keeping (18%).

Figure 2: Individual breach types



Reasons for the non-compliance included:

- confusion over the correct award coverage
- misinterpretation of casual and part-time provisions
- receipt of incorrect advice from third party (e.g. accountant).

Inspectors provided businesses with information and resources to assist compliance with their obligations.

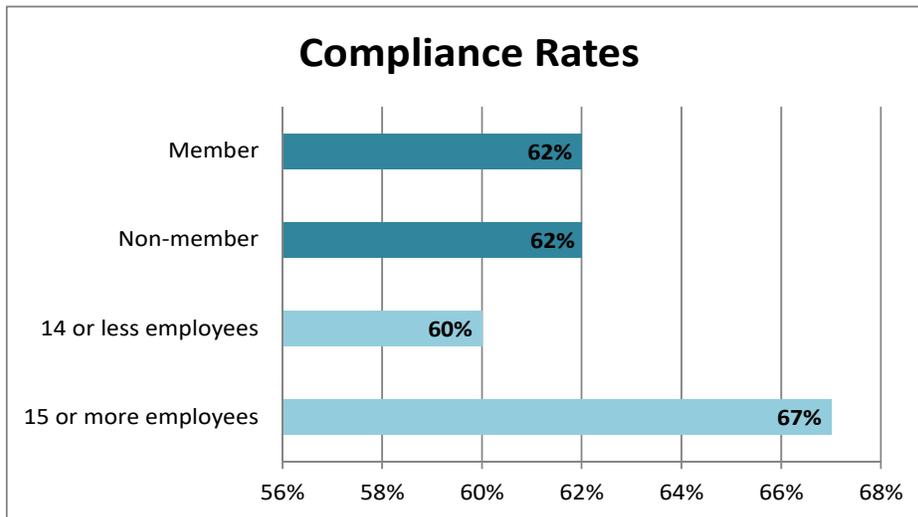


Association membership and business size

Businesses that were members of an industry or employer association had the same compliance rate (62%) than businesses that were not members (62%).

Businesses with 15 or more employees had a compliance rate of 67% compared to 60% for businesses with 14 or less employees.

Figure 3: Association and business size compliance rates



Next steps

To support businesses in the region to comply with their workplace obligations, the FWO will:

- continue to educate employers on their obligations and encourage them to contact the FWO and others for assistance and advice on workplace relations matters
- promote key themes identified in campaigns through communication and media activities and use the findings of this campaign to inform future compliance activities
- promote the tools and resources available on the FWO website www.fairwork.gov.au.



Conclusion

The campaign revealed that 60% of businesses in the region, which were all previously found to be non-compliant, were now fully compliant with their workplace obligations. 80% of businesses were meeting their record-keeping and pay slip obligations and 74% of businesses were paying their employees correctly.

Findings showed that following initial interactions with the FWO, businesses were able to use the advice provided by Inspectors to remain compliant with Australian workplace laws. This is significant as those businesses, many of them small, now have systems and processes in place to continue to be compliant. The campaign also found that in many cases where non-compliance was detected, businesses had made efforts to comply.

However, it is important for businesses to comply with all of their workplace relations obligations all of the time. Ongoing non-compliance is taken seriously by the FWO. Where businesses had made no or little effort to comply, or where more significant issues remained at the time of this campaign, the FWO took enforcement action, including commencing legal proceedings in two instances of alleged significant non-compliance.



About the Fair Work Ombudsman

The Fair Work Ombudsman is an independent agency created by the *Fair Work Act 2009* on 1 July 2009. Our main role is to promote harmonious, productive and cooperative workplace relations.

Each year the Fair Work Ombudsman runs proactive campaigns to assist employers and employees understand their rights and obligations under Commonwealth workplace relations laws.

These campaigns can focus on particular industries, regions and/or labour market issues and are conducted on a national and state level.

This report covers the background, method and findings of the ACT Compliance Monitoring Campaign. For further information and media enquiries please contact the media team at media@fwo.gov.au

If you would like further information about the Fair Work Ombudsman's campaigns please contact Nicky Chaffer, Executive Director - Proactive Compliance and Education at Nicky.Chaffer@fwo.gov.au.