

Southern ACT Report

Outcomes from the Fair Work Ombudsman's
Southern ACT Regional Campaign

SOUTHERN ACT REGIONAL CAMPAIGN

WHAT DID WE FIND?



79% of businesses compliant with pay slip & record-keeping obligations



83% of businesses paying their employees correctly



69% of businesses compliant with all requirements



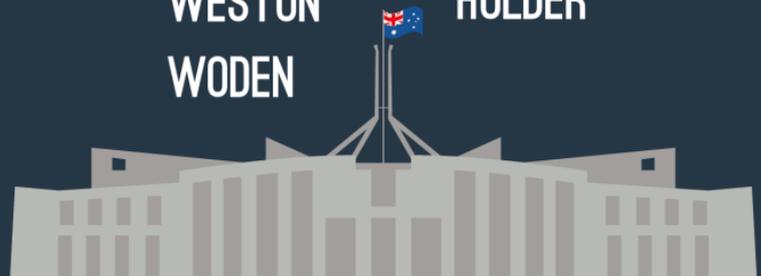
\$27 054 recovered for 28 employees from 4 businesses

WHERE DID WE GO?

**52 BUSINESSES
AUDITED**

PHILLIP
WESTON
WODEN

QUEANBEYAN
HOLDER



COMPLIANCE & ENFORCEMENT OUTCOMES



2

FORMAL CAUTIONS



2

COMPLIANCE NOTICES



Summary

The Fair Work Ombudsman (FWO) undertook an education and compliance campaign (the campaign) in the southern region (the region) of the Australian Capital Territory (ACT).

The region was identified as suitable for a campaign based upon the following factors:

- a large proportion of Requests for Assistance (RfAs) received from young workers in the regions of Queanbeyan (44.4%) and Woden (35.3%) compared to the national average (24%)
- projected growth across numerous industries, including Public Administration & Safety, Health Care & Social Assistance, Construction and Accommodation & Food Services¹
- an opportunity for the FWO to reach a large number of small businesses that often lack dedicated staff to perform human resources and payroll functions.

Of the 52 businesses audited:

- 43 (83%) were paying their employees correctly
- 41 (79%) were compliant with pay slip and record-keeping requirements
- 36 (69%) were compliant with all requirements
- \$27 054 was recovered from four businesses on behalf of 28 employees
- two formal cautions and two compliance notices were issued.



What we did

The FWO contacted stakeholders in the region to discuss the planning, delivery and promotion of the campaign.

The campaign received media coverage through Radio National Canberra. This local coverage informed a broader audience beyond those specifically included in the campaign. Many businesses advised they had heard of the campaign before the FWO contacted them.

Businesses involved in this campaign were selected randomly with a higher weighting assigned to those industries from which the FWO had received higher numbers of RfAs. Fair Work Inspectors (Inspectors) contacted businesses in the suburbs of Phillip, Weston, Woden, Queanbeyan and Holder (the southern region).

The businesses were audited against the requirements of the *Fair Work Act 2009* (the Act), the *Fair Work Regulations 2009* (the Regulations) and the applicable award or agreement, in particular:

- record-keeping / pay slips
- base rates of pay
- penalty rates / overtime

¹ Department of Employment, Labour market information portal, Industry Employment Profiles – Australian regions (four quarter averages of Original Labour Force Survey Data, ANZSIC Divisions)

- allowances / loadings.

The businesses covered a range of industry sectors with the most common modern awards being:

- *Restaurant Industry Award 2010*
- *Hospitality Industry (General) Award 2010*
- *General Retail Industry Award 2010*
- *Building & Construction General On-site Award 2010.*

In all audits, initial contact was made through a telephone conversation with the employer. These initial conversations enabled Inspectors to readily establish that the business was operating, explain the scope and reason for the campaign, as well as the process and what to expect as a result of the audit.

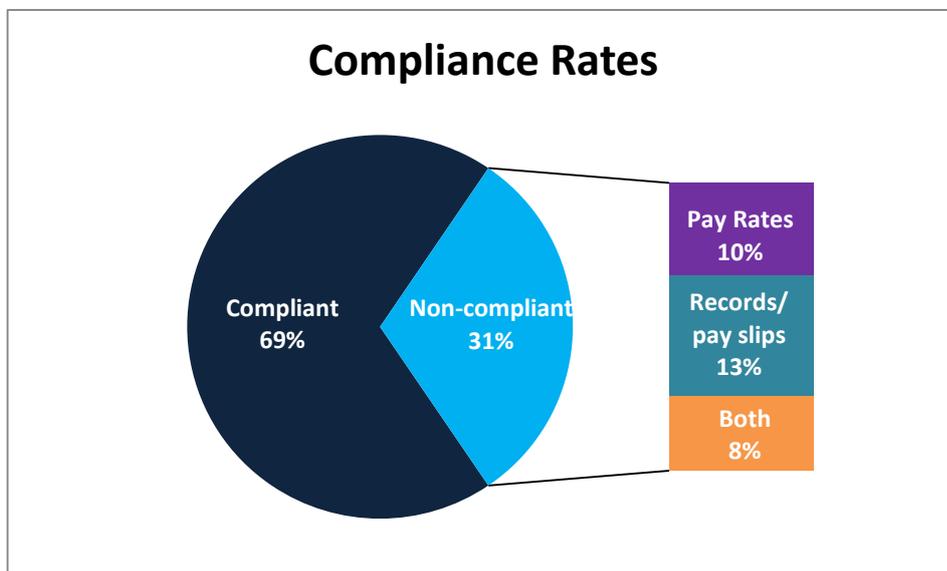
Where breaches were identified by the audit, Inspectors required businesses to rectify the issue and provide proof of having done so (including back-paying any underpaid employees).

Inspectors also provided businesses 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 52 businesses audited:

- 36 (69%) were compliant with all requirements
- 16 (31%) had at least one breach:
 - seven (13%) had breaches relating to pay slips or record-keeping
 - five (10%) had breaches relating to pay rates
- four (8%) had both pay rate and record / pay slip breaches
- 43 (83%) businesses were paying their employees correctly
- 41 (79%) businesses were compliant with record-keeping and pay slip requirements
- \$27 054 was recovered from four businesses on behalf of 28 employees.



Compliance and enforcement

Two 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

A large electrical-construction business, employing more than 90 workers, provided a sample of records for 15 employees, who were engaged in different occupations across a wide range of varying classifications. The inspector conducting the audit found no issues with the majority of the records provided, but when reviewing the rates for a casual Level 1 Electrical Worker, covered by the *Electrical, Electronic and Communications Contracting Award 2010* (the Award), disclosed an underpayment of \$1.85 per hour.

As there were no other contraventions identified, the inspector contacted the business' accounts manager to advise them of this discrepancy and to request that the records for all employees of this classification be reviewed. The business conducted a full review and identified that 22 employees, over a five-month period, had been underpaid a combined total of \$18 711.17 under the Award.

The FWO reviewed the calculations, agreed with the quantum and directed the employer to rectify the breaches. On receiving confirmation of payment, the FWO issued the business with a formal caution.

Two compliance notices were 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 against the respondent. Of the \$27 054 total monies recovered in the campaign, \$8204 was recovered from two businesses for five employees as a result of compliance notices issued.

A small restaurant provided records to a Fair Work Inspector upon request. The restaurant employed three staff members, all covered by the *Restaurant Industry Award 2010* (the Award). On reviewing the records, the inspector identified multiple issues for all three employees. Two of the employees, one part-time the other full-time, were engaged on salaried agreements but their base hourly rates were not sufficient enough to cover the salary provisions of the Award. The other staff member was employed as a casual but only received \$19.83 per hour for all hours worked, significantly lower than that stipulated in the Award.

In addition to the underpayment the employer had also failed to keep a record of hours worked for all employees, which is a requirement for all casual employees and employees covered by the salaried provision of the Award.

The inspector notified the employer of the breaches and liaised with the employer's accountant to conduct calculations for the relevant period. Calculations were provided and reviewed by the inspector.

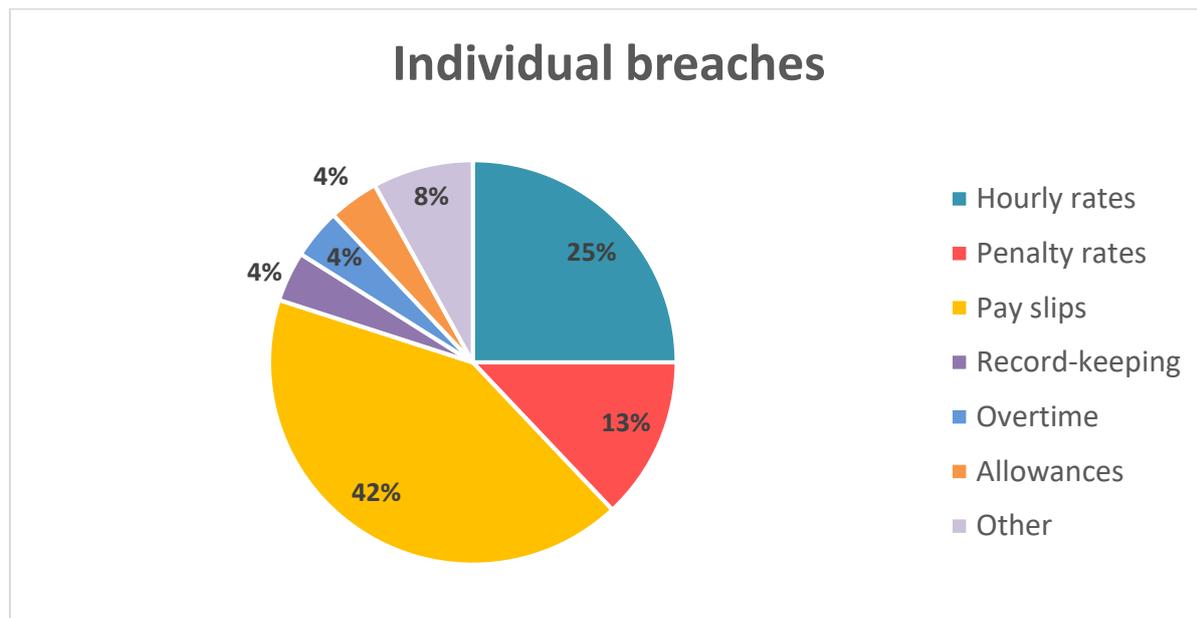
The calculations identified a combined gross underpayment of \$7826 for the three employees. Based on the quantum of the underpayments, multiple contraventions of the Award and the failure to fully meet record keeping requirements, the FWO issued the business with a compliance notice. The employer fully complied with the FWO and made the back payments in accordance with the notice.



Breaches

The 16 businesses that were found to be non-compliant had a total of 24 breaches. The most common breaches related to pay slips (42%), underpayment of hourly rates (25%) and penalty rates (13%).

Figure 2: Individual breach types



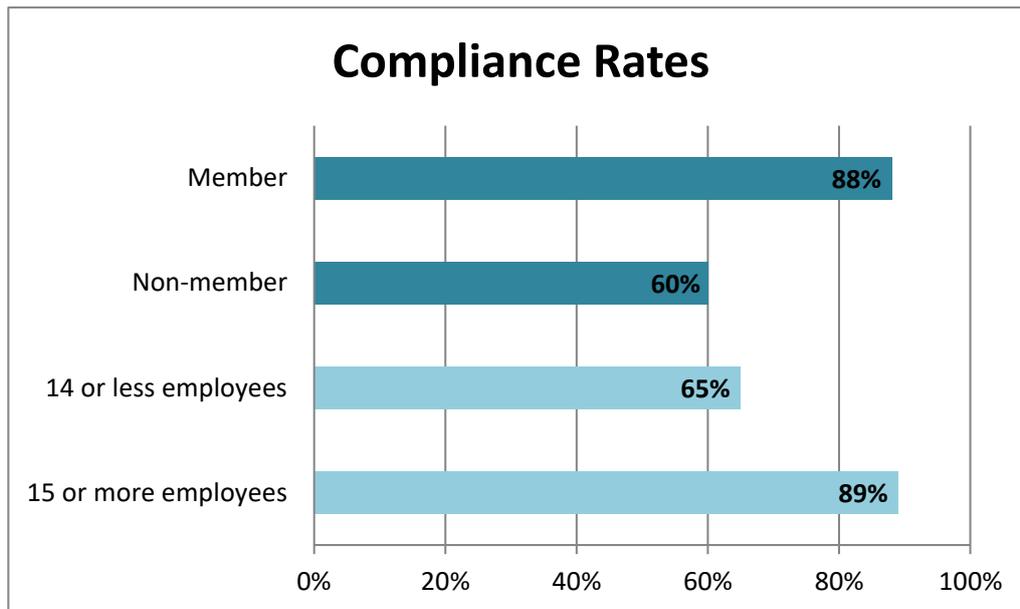


Association membership and business size

Businesses that were members of an industry or employer association had a higher compliance rate (88%) than businesses that were not members (60%). This suggests that employer associations have a positive effect on compliance rates through ongoing member engagement and support.

The size of the business also had an effect on audit outcomes. Businesses with 15 or more employees had a compliance rate of 89% whereas businesses with 14 or less employees had a compliance rate of 65%.

Figure 3: Compliance by association membership and business size



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](http://www.fairwork.gov.au) www.fairwork.gov.au.



Conclusion

The campaign found that 69% of businesses in the region were fully compliant with their workplace obligations. 83% of businesses were paying their employees correctly, and 79% of businesses were compliant with their record-keeping and pay slip obligations.

Larger businesses and members of industry or employer associations were found to be more compliant with their workplace relations obligations than small businesses, which often lack ready access to professional support. This demonstrates the importance of FWO's continuing focus on providing advice and assistance to small businesses, particularly in locations such as Southern ACT where the proportion of small businesses is high.

The results of this campaign will inform future education and audit activities, which may include businesses from the region. All businesses found to be non-compliant during this campaign will be considered for inclusion in the FWO's ongoing National Compliance Monitoring Campaign.

The FWO will continue to work with businesses across the region to encourage sustained, conscious compliance with workplace laws, providing information, tools and resources designed to make compliance easier.



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 or regional level.

This report covers the background, method and findings of the Southern ACT Regional 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.