

Alice Springs – Barkly Campaign

Outcomes from the Fair Work Ombudsman's
NT Alice Springs – Barkly Regional Campaign

NT ALICE SPRINGS-BARKLY REGIONAL CAMPAIGN 2016

WHAT DID WE FIND?



87% of businesses compliant with pay slip & record-keeping obligations



66% of businesses paying their employees correctly



61% of businesses compliant with all requirements



\$77 984
Total recoveries

WHERE DID WE GO?

**38 BUSINESSES
AUDITED**



TENNANT CREEK

ALICE SPRINGS

COMPLIANCE & ENFORCEMENT OUTCOMES



2

**FORMAL
CAUTIONS**



3

**INFRINGEMENT
NOTICES**



1

**ENFORCEABLE
UNDERTAKING**



1

LITIGATION



Summary

The Fair Work Ombudsman (FWO) undertook an education and compliance campaign (the campaign) in the Alice Springs – Barkly region (the region).

The campaign was initiated due to:

- low compliance rates (40%) for businesses audited in the 2014 Alice Springs education and compliance campaign
- a number of requests for assistance (RfAs) received from employees working in a range of industry sectors in the region
- 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 out to small regional businesses that often lack dedicated staff to perform human resources and payroll functions.

Of the 38 businesses audited:

- 33 (87%) were compliant with record-keeping and pay slip requirements
- 25 (66%) were paying their employees correctly
- 23 (61%) were compliant with all requirements
- A combined total of \$77 984.69 was recovered from nine businesses on behalf of 44 employees²
- two formal cautions and three infringement notices (on-the-spot fines) were issued
- one enforceable undertaking was executed
- one litigation was filed.



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 a number of local media outlets including the Workforce Guardian. This local coverage informed a broader audience beyond those specifically included in the campaign. Some businesses advised they had heard of the campaign before the FWO contacted them.

The businesses selected for participation in this campaign were chosen randomly, with a higher selection weighting assigned to those industry sectors from which the FWO had received higher numbers of RfAs.

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

² Includes \$50 664.69 back paid to 11 employees under the Enforceable Undertaking with Tennant Creek Women's Refuge Inc. *It excludes monies back-paid during FWO's ongoing court proceedings against David Mayne Pty Ltd (see 'Case study- litigation', on page 7 of this report).*

Fair Work Inspectors (Inspectors) conducted a total of 38 audits on businesses throughout towns in the region, including Tennant Creek, Ciccone and Alice Springs. 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. Where breaches were identified, Inspectors required businesses to rectify the issue and provide proof of having done so (including back-paying any underpaid employees).

The most common modern awards identified during the audits were:

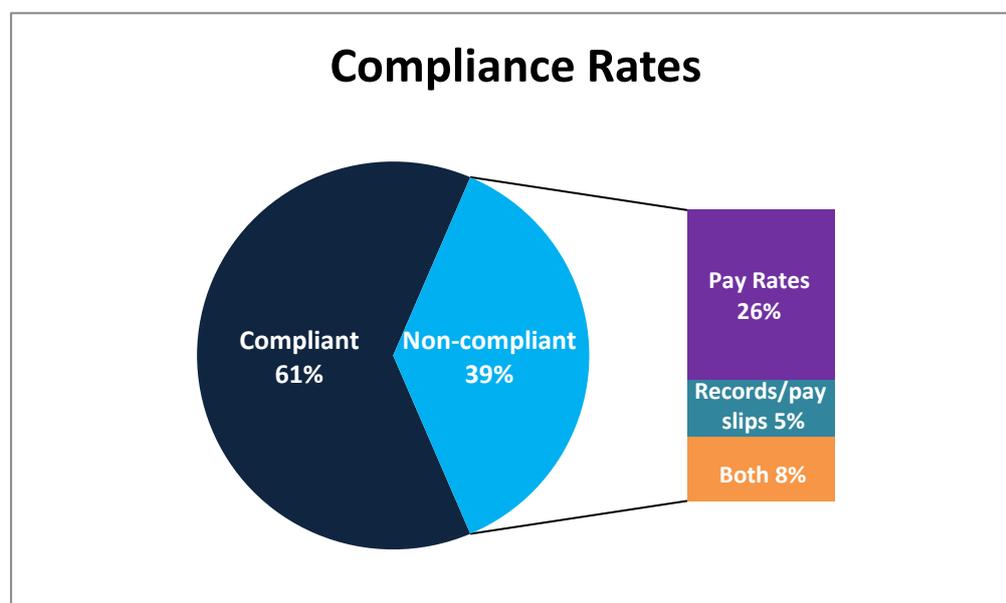
- *Social, Community, Home Care and Disability Services Industry Award 2010*
- *General Retail Industry Award 2010*
- *Building and Construction General On-site Award 2010*
- *Hospitality Industry (General) Award 2010*
- *Restaurant Industry Award 2010*
- *Fast Food Industry Award 2010.*

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 38 businesses audited:

- 23 (61%) businesses were compliant with all requirements
- 15 (39%) businesses had at least one breach:
 - 10 (26%) had breaches relating to pay rates

- three (8%) had both pay rate and pay slip / record-keeping breaches
- two (5%) had breaches relating to pay slips or record-keeping.

This means that:

- 33 (87%) businesses were compliant with pay slip and record-keeping requirements
- 25 (66%) businesses were paying their employees correctly
- \$77 984.69 was recovered from nine businesses on behalf of 44 employees.



Compliance and enforcement

Two formal cautions were issued. A formal caution is 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

Inspectors audited a hotel that had been operating in the region since 2006. The business had eight employees, mainly employed on a casual basis. All of the employees were covered by the *Hospitality Industry Award 2010* (the Award). On assessing the records provided by the employer, an inspector identified that all of the casual employees were receiving a flat rate of pay for all hours worked. This flat rate was not sufficient to ensure that their minimum entitlements were being received.

Following contact with the employer, the inspector established that the majority of employees were provided meals and accommodation at no charge. The employer wasn't aware that the Award had provisions that stated these benefits could be deducted from employees' wages. Though the inspector acknowledged these additional benefits, they still directed the employer to review all records and correct any underpayments found. To assist with this process, the inspector provided all relevant clauses of the Award and current rates of pay, including all penalty rates.

The employer provided calculations that clearly identified two casual employees had been underpaid a combined total of \$2018.11 over an 11-month period. These underpayments were due to work performed by the employees on Sundays and public holidays. Neither employee required accommodation. After reviewing the calculations and receiving confirmation of payment, the FWO issued the employer with a formal caution due to the employer having operated the business for more than 10 years with limited understanding of the Award.

Three 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 \$2160 in infringement notices was issued during the campaign.

Case study – Infringement notice

The FWO assessed the records of a remote cattle station in the region that engaged casual employees during their busy periods, such as mustering times. At the time of the audit the employer had two casual Farm & Livestock Hand Level 1 employees, covered by the *Pastoral Award 2010* (the Award).

On reviewing the records an inspector found that the employees were being paid by the day and not the hour. On requesting records for the hours worked, the inspector was advised that they did not exist as they were paid by the day. Though there were no records of the hours worked there still appeared to be an underpayment. The inspector found that the employees received food, accommodation and transport when needed and were also paid for time off due to the flexible nature of the job.

With the additional information, the inspector could not identify if the employees had received their correct entitlements. To assist the business to comply with their obligations moving forward, the inspector provided the relevant clauses of the Award that needed to be addressed with regard to pay rates and record keeping requirements.

Failure to make and keep records is a serious offence under the Act and as there was no way to determine whether or not the employees received their minimum entitlements, the FWO issued the business with an infringement notice of \$1800 for failing to keep records as required under the Regulations.

The FWO will revisit this business as part of follow-up activity in the future.

One enforceable undertaking was executed. An enforceable undertaking is a publically available legally binding agreement between an employer and the FWO in which the employer accepts responsibility for serious breaches of the Act. The employer agrees to pay all outstanding monies owed to their employees, and to terms that ensure future compliance, such as training sessions for senior managers, and periodic compliance reporting. Enforceable undertakings typically operate for a period of between two to five years.

Case study – Enforceable undertaking

The FWO entered into an enforceable undertaking with Tennant Creek Women's Refuge Inc. in 2017 after Inspectors found, through the course of the audit, that the business had failed to meet wages obligations in accordance with the Equal Remuneration Order under the *Social, Community, Home Care and Disability Services Award 2010* (the Award).

Through discussions with the CEO, Inspectors found that the underpayments had arisen due to a failure to keep up to date with the changes to the modern award. The business back paid \$50 664.69 to 11 employees to rectify the underpayment of minimum weekend rates and shift loadings.

As part of the enforceable undertaking, the business agreed to a number of actions, including:

- registering with a FWO My account and subscribing to FWO alerts and newsletters relevant to the organisation
- ensuring that the CEO completes the educational activities on the FWO website

- sending a letter of apology to affected employees
- engaging an external body such as an accounting professional, to undertake periodic audits each year until 2019, providing evidence of audits to FWO
- providing the FWO with details of systems and processes already in place or to be implemented in order to comply with the Act, Regulations and modern award
- a workplace notice of the undertaking to be displaced in all workplaces controlled by the business and a public notice in the local newspaper.
- a provision in writing informing all agencies or other bodies that provide funding, that they have entered into an undertaking with the FWO.

One litigation was filed. 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 FWO and is reserved for matters involving allegations of serious non-compliance and where a penalty is considered warranted.

Case study - Litigation

The FWO commenced proceedings against David Mayne Pty Ltd, the legal entity operating the Barkly Homestead, an accommodation and roadhouse service on the Barkly Highway between Tennant Creek, NT, and Camooweal, Qld. The matter relates to the alleged underpayment of \$23 753.93 over six months of 17 employees under the *Hospitality Industry (General) Award 2010* (the Award).

The FWO alleges the employees were all engaged full-time on a flat rate of \$19.21 per hour to undertake cleaning, gardening and waiting duties. Although the flat rate was \$0.74 above the minimum ordinary hourly rate for the classification, it was insufficient to cover the penalties, overtime and shift allowances that the employees were entitled to under the Award. This resulted in an alleged underpayment of \$23 753.93 to the 17 employees over the six-month period. Legal action was commenced due to the significant alleged underpayments across a relatively short period, and the lack of earlier co-operation from the employer. Once legal action had begun, the company director sought to rectify underpayments of nine of the 17 employees, back paying a total of \$14 232.15.

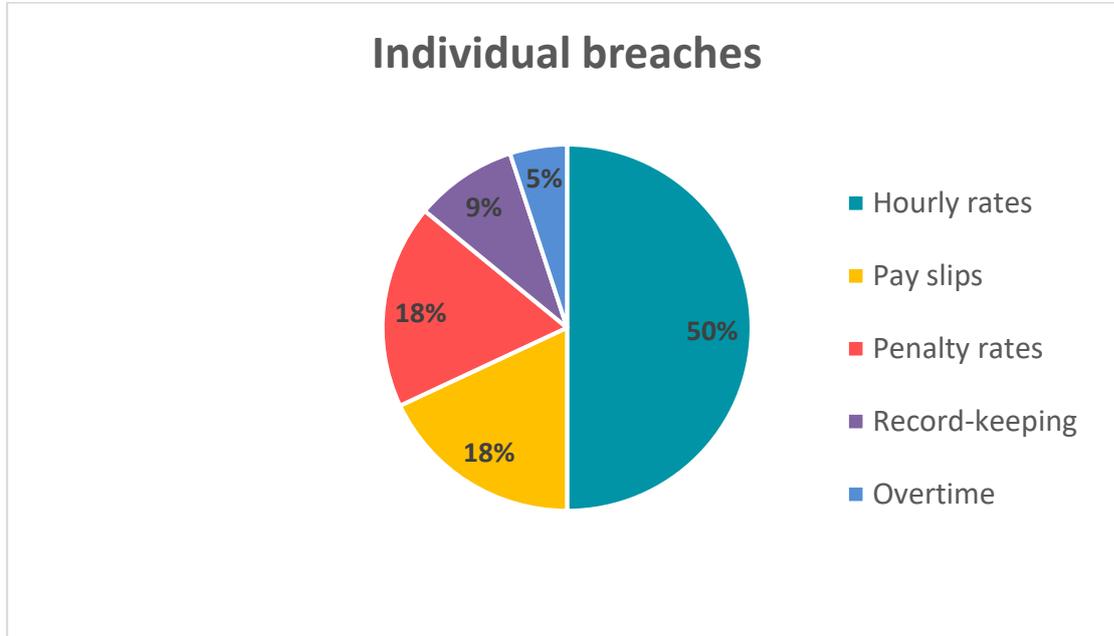
The FWO sought payment of the outstanding underpayments (\$9 521.78), to be distributed to the remaining employees, and that penalties apply in respect of the breaches. Furthermore, the FWO requested an order requiring manager Andrew Mayne register with My account and complete all employer education courses. At the time of publication the matter remains before the court.



Breaches

The 15 businesses that were found to be non-compliant had a total of 22 breaches. The most common breaches related to underpayment of hourly rate (50%), penalty rates (18%) and pay slips (18%).

Figure 2: Individual breaches

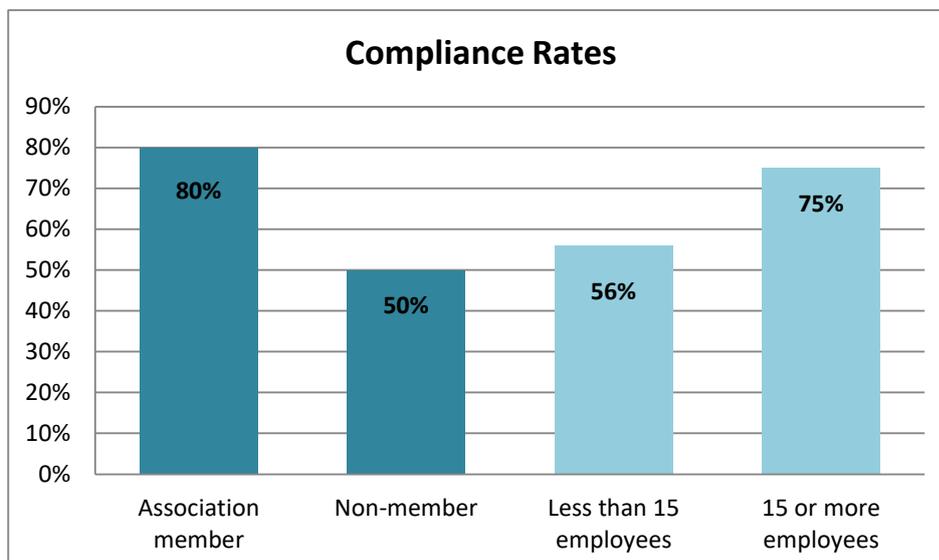


Association membership and business size

Businesses that were members of an industry or employer association had a higher compliance rate (80%) than businesses that were not members (50%).

Larger businesses (with 15 or more employees) had a higher compliance rate (75%) than smaller businesses (56%).

Figure 3: Compliance by association membership and business size





Next steps

To ensure that employers in the region receive ongoing support, 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 61% of businesses in the region were fully compliant with their workplace obligations under the Act and Regulations. 66% of businesses were paying their employees correctly, and 87% 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 the Alice Springs and Barkly region where the proportion of small businesses is high.

The results of this campaign will inform future education and compliance 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 Alice Springs and Barkly 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 national or regional levels.

This report covers the background, method and findings of the NT Alice Springs – Barkly Regional Campaign 2016. 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 Glenn Jordan, Executive Director - Proactive Compliance and Education at glenn.jordan@fwo.gov.au.