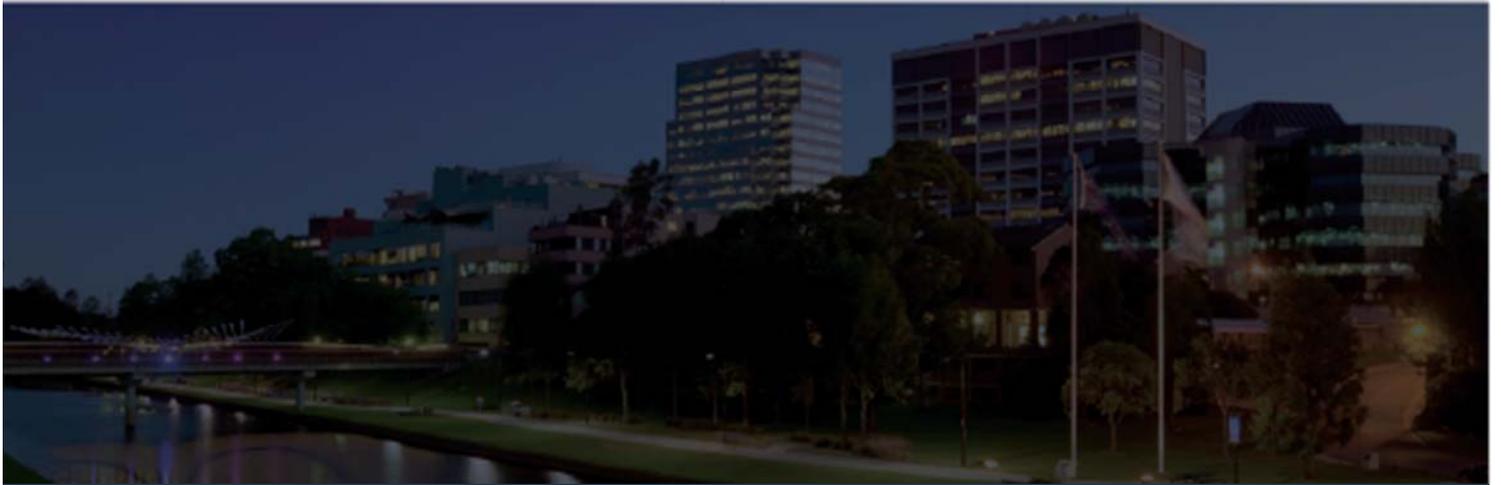




Fair Work
OMBUDSMAN



Western Sydney Campaign Report

March 2018

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WESTERN SYDNEY CAMPAIGN

WHAT DID WE FIND?



64% of businesses were non-compliant with their obligations under workplace laws



42% of businesses were not paying their employees correctly



36% of businesses were non-compliant with pay slip & record-keeping obligations



\$369 324 recovered for 199 employees from 57 businesses

WHERE DID WE GO?

197 BUSINESSES
AUDITED



CABRAMATTA MERRYLANDS

FAIRFIELD MOUNT DRUITT

GUILDFORD PARRAMATTA

HARRIS PARK WETHERILL PARK

COMPLIANCE & ENFORCEMENT OUTCOMES



26

FORMAL
CAUTIONS



20

INFRINGEMENT
NOTICES



11

COMPLIANCE
NOTICES

Summary

This report provides results from an education and compliance campaign undertaken by the Fair Work Ombudsman (FWO) in the Western Sydney region of New South Wales. The region was identified as an appropriate focus for the FWO based on the following factors:

- There was an increase in the number of Requests for Assistance (RfAs) received by the FWO in some parts of the region between 2011 and 2014. While NSW experienced an overall decrease in RfAs (down 10%) during this period, several regions in Western Sydney saw increases in customer requests. The highest was Mount DrUITT which recorded a concerning 41% increase.
- Employment growth was projected across numerous industries, including wholesale trade, retail and accommodation & food services¹.
- The areas audited in the campaign had a high representation of people born in a country other than Australia². The FWO's experience and data indicates that workplace participants from culturally and linguistically diverse (CALD) backgrounds often need tailored assistance to understand and comply with Australia's workplace laws.

Of the 197 businesses audited:

- 127 (64%) were not compliant with all requirements under workplace laws
- 83 (42%) were not paying their employees correctly
- 70 (36%) were not compliant with record-keeping and pay slip requirements
- \$369 324 was recovered from 57 businesses on behalf of 199 employees
- 26 formal cautions, 11 compliance notices and 20 infringement notices were issued.

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 45% in western Sydney compared to the national average of 30.2%. The most common birthplaces in the Western Sydney region were Southern Asia (15%), Mainland South-East Asia (12%), Maritime South-East Asia (11%) and Chinese Asia including Mongolia (11%) - ABS 2011 Census of Population and Housing.

The Campaign's Methodology

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

The campaign received coverage through a number of local media outlets including the Penrith Press and Parramatta Sun. This local media coverage informed a broader audience beyond those specifically included in the campaign. A number of selected businesses indicated that due to the media coverage they were aware of the campaign prior to being contacted by the FWO and were better prepared to work with the FWO during the campaign.

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

Fair Work Inspectors contacted businesses ahead of the campaign to increase cooperation from businesses included in the audit and provide them with notice to gather their time and wage records. Businesses in the following suburbs were contacted:

- Cabramatta
- Fairfield
- Mount Druitt
- Merrylands
- Guildford
- Parramatta
- Harris Park.

The FWO assessed time and wages records for 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 required businesses to rectify the issue and provide proof of having done so (including back-paying any underpaid employees).

Inspectors also conducted unannounced, targeted site visit activities in both Harris Park and Parramatta as a result of intelligence received concerning certain businesses.

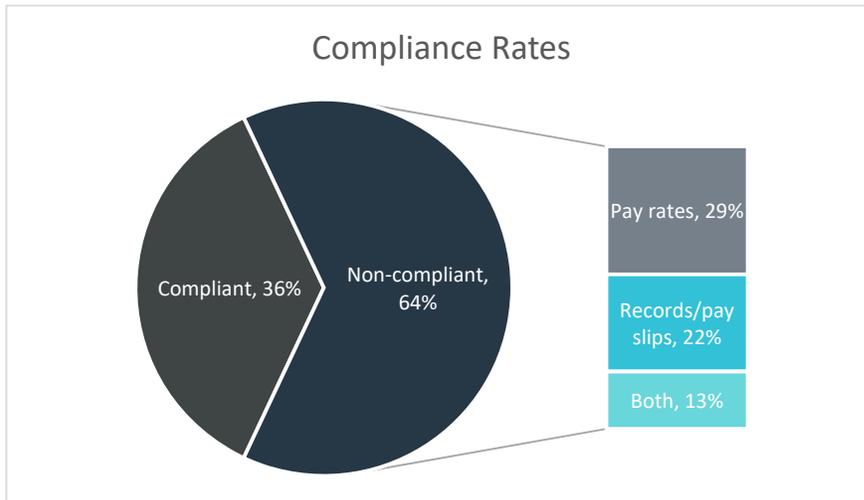
Businesses audited in the region were covered by awards that included:

- Hospitality Industry (General) Award 2010
- General Retail Industry Award 2010
- Restaurant Industry Award 2010
- Fast Food Industry Award 2010
- Hair and Beauty Industry Award 2010.

Inspectors 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](#), content relating to [hiring employees guide](#), [My account](#) and [online training courses](#).

Key Findings

The key findings from the campaign and the individual locations audited are outlined below.



Of the 197 businesses audited:

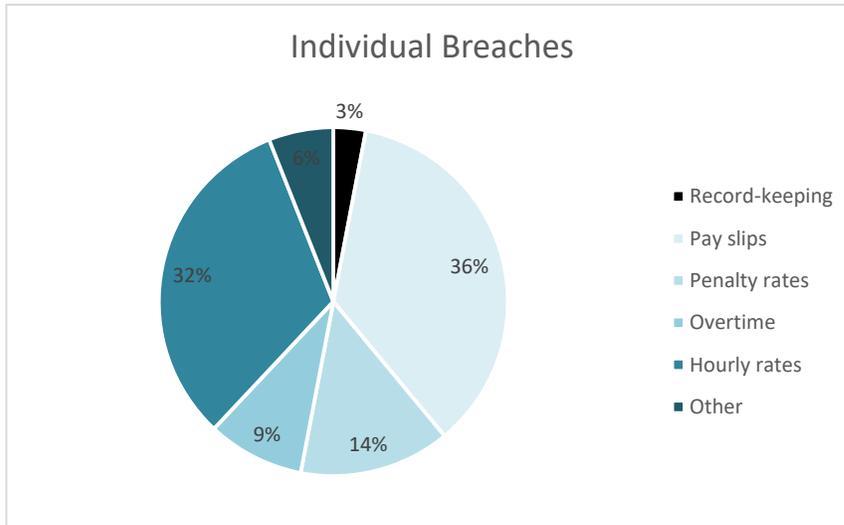
- 127 (64%) businesses had at least one breach (which is 17% above our campaign average at 47% in the 2016-17 financial year):
 - 57 (29%) had breaches relating to pay rates
 - 44 (22%) had breaches relating to pay slips or record-keeping
 - 26 (13%) had both pay rate and records/pay slips breaches.
- 70 (36%) businesses were compliant with all requirements.

This means that:

- 127 (36%) businesses were not compliant with record-keeping and payslip requirements
- 83 (42%) businesses were not paying their employees correctly
- \$369 324 was recovered from 57 businesses on behalf of 199 employees.

Individual Breaches

The 127 businesses that were found to be non-compliant had a total of 184 individual breaches. The most common breaches related to pay slips (36%), underpayment of hourly rates (32%) and penalty rates (14%).



Site Visits – Harris Park and Parramatta

Harris Park and Parramatta were identified as suburbs of interest based on the following factors:

- Intelligence was received from multiple sources suggesting significant non-compliance in the restaurant industry in both suburbs involving employees and employers from CALD backgrounds.
- Both Harris Park (85%) and Parramatta (74%) had a high number of migrants living in these suburbs compared to the national average of 30.2%³. With such a high proportion of the population born overseas, the FWO considered both employers and employees would benefit from additional support and education from the FWO.

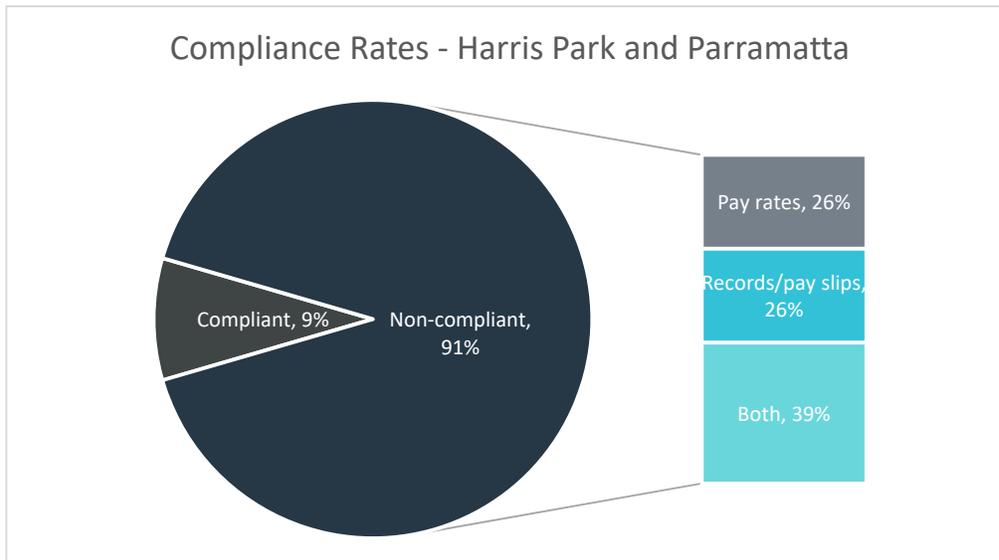
Anecdotally, inspectors observed most of the employers were 2nd or 3rd generation migrants, so we did not experience the usual language barriers often associated with new migrants when engaging with the employers in the audit and providing them with education.

Despite this, we did find many occasions where language and cultural barriers may have led to reluctance to engage with the FWO and contributed to a lack of understanding of their employment obligations.

³ In the suburb of Harris Park, the most common regions of birthplace were Southern Asia (62%), Chinese Asia, including Mongolia (8%) and the Middle East (8%). In the suburb of Parramatta, the most common regions of birthplace were Southern Asia (37%), Chinese Asia including Mongolia (26%) and the Middle East (7%) - ABS 2011 Census.

Inspectors conducted unannounced site visits on restaurants in both suburbs over two continuous days during the campaign to:

- test the intelligence received
- identify levels of compliance
- assess businesses knowledge of Australian workplace laws.



Targeting Harris Park and Parramatta Restaurants

The FWO undertook a targeted initiative as part of the Western Sydney campaign on Indian restaurants in the Harris Park and Parramatta area, based upon intelligence received about the sector in this area.

Of the 23 restaurant businesses visited in Harris Park and Parramatta:

- 21 (91%) businesses had at least one breach:
 - 6 (26%) had breaches relating to pay rates
 - 6 (26%) had breaches relating to pay slips or record-keeping
 - 9 (39%) had both pay rate and records/pay slip breaches.
- Two (9%) businesses were compliant with all requirements

This means that:

- 15 (65%) businesses were not paying their employees correctly
- 15 (65%) businesses were not compliant with record-keeping and pay slip requirements.

As a result of this targeted initiative:

- \$25 209 was recovered from 12 businesses on behalf of 51 employees
- Six formal cautions, two compliance notices and 12 infringement notices (on-the-spot fines) were issued.

At the site visits, Inspectors found the employers were cooperative and engaged with the FWO during the process meaning that despite the level of non-compliance the FWO identified we were able to use the opportunity to educate the employers about their obligations and ensure cases of non-compliance were appropriately rectified.

A number of the Harris park businesses were family operated, and the workforce sizes most often small to micro. This is common in the hospitality industry. We found common gaps in knowledge of the business operators included both record-keeping obligations as well as a general lack of knowledge about award entitlements. We also identified non-compliant employers who advised us that they had relied on their accountant for employment advice that was incorrect.

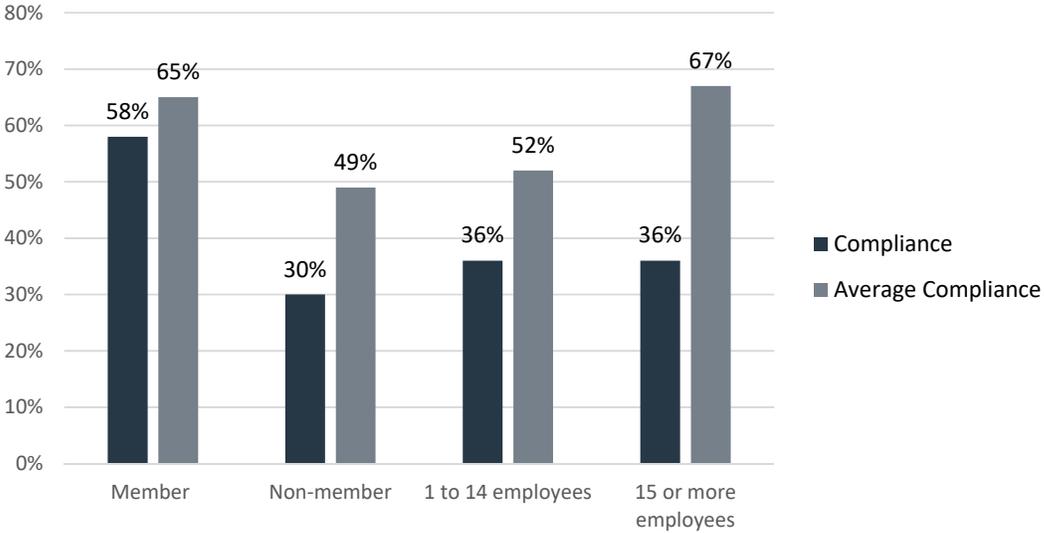
Membership and business size

The FWO has found that businesses are more likely to be compliant with workplace laws when they have access to specialised workplace relations advice such as through membership to an employer organisation, or access to accounting or legal advice or a dedicated human resources professional within the business. Larger businesses are more likely to have the resources to employ a human resources or payroll professional in-house.

Businesses that were members of an industry or employer association had a higher compliance rate (58%) than businesses that were not members (30%). While this result is fairly typical of other campaigns, the compliance rates related to both members and non-members in the region are lower than the FWO's experience throughout campaigns. The average compliance rate for businesses that were a member of an employer association across the FWO's campaigns in 2016-17 financial year were 65% for members and 49% for non-members.

There was no difference between compliance rates based on business size with the campaign finding that larger businesses (with 15 or more employees) and smaller businesses both sharing the same compliance rate (36%). This contrasts with the FWO's experience across our campaigns, where the average compliance rate for small businesses is considerably lower than larger businesses (52% compared with 67% in the 2016-17 financial year).

Compliance Rates



Outcomes

The FWO had a number of compliance and enforcement outcomes as a result of the campaign, including:

- 26 formal cautions
- 20 infringement notices
- 11 compliance notices

Below are details of each of these compliance outcomes and case studies taken from the campaign to illustrate each outcome.

Case study – Formal caution

Twenty-six formal cautions were issued during the campaign.

Formal cautions are issued when the FWO has found non-compliance and has decided it is not appropriate to use a formal enforcement tool, but that it is important to put 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 (in writing) 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.

A large hair salon was audited as part of the campaign. The business employed 10 staff members, all covered by the *Hair and Beauty Industry Award 2010*. Six employees were paid an annualised salary and four were paid by the hour. An annual salary is an agreement about the amount of pay an employee will receive for work over a 12-month period. An annual salary can't be less than the minimum entitlements an employee is entitled to under the award or registered agreement that applies and the National Employment Standards. When assessing the records provided, inspectors identified that three of the salaried employees, who were also apprentices, were not receiving sufficient pay to cover their hours of work.

The employer had failed to amend the salaries to take into account the most recent award wage increase. The employer was provided with the current award rates of pay and directed to conduct calculations for the period since the wage increase and rectify any underpayments identified. The employer back-paid the three apprentices a combined total of \$3625.54. As the underpayment affected vulnerable employees (apprentices) the inspector issued a formal caution to the business.

Case study – Infringement notice

Twenty infringement notices were issued during the campaign. An infringement notice is a fine given to a business for non-compliance with record-keeping or pay slip requirements.

A total of \$6 300 in infringement notices was issued during the campaign.

A small hairdressing business was selected to participate in the campaign. The business employed four hairdressers covered by the *Hair and Beauty Industry Award 2010*. When reviewing the records provided for the audit, inspectors identified issues with the pay slip samples.

The pay slips did not show the loadings for Saturday work and did not provide the amount of hours worked for that pay cycle. The failure to include these details made it difficult for inspectors to identify whether the employees' minimum entitlements were received without relying on timesheets.

Failure to provide the required information on pay slips is a serious breach of the *Fair Work Act 2009*. In this instance, the FWO issued an infringement notice of \$720 on the business for failing to issuing pay slips with the required contents as set out in the Regulations.

Case study – Compliance notice

Eleven compliance notices were issued during the campaign. 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 \$79 011.76 was recovered from 11 businesses for 38 employees as a result of compliance notices being issued.

A family restaurant from the region was audited as part of the campaign. The business had been operating since 1999 and had only recently changed hands from father to son. When reviewing the requested records provided, inspectors identified that the employer was paying under an expired state award that was no longer operative, the *Caterers Employees (State) Award*. The transition to the Modern Award began in 2010.

When comparing rates with the correct award, the *Restaurant Industry Award 2010*, it was clear that the casual employees had been significantly underpaid their hourly rate and their penalty rates for evening and weekend work.

Following a review, it was determined that the three casual employees were owed a combined total of \$10 444.69. A compliance notice was issued directing the employer to rectify the underpayment. The employer fully complied with the notice.

Case Study 1– The value of education

The campaign was an important opportunity to provide information and advice to employers about their obligations under workplace laws. For example, we were able to intervene early in one employment relationship and educate a new business owner prior to the first payment of a staff member, ensuring they avoided paying the unlawfully low rate of pay they had based upon their accountant's advice.

The following case studies provide further examples of the value of education.

Inspectors visited a (small) Indian restaurant in Parramatta to conduct interviews on-site. The business was not a member of any association and on examination of employee records we found contraventions of both the rates of pay for kitchen and waiting staff, as well as significant omission in the content of pay slips supplied to employees.

In speaking with the employer it became clear that they were unaware of their obligations in relation to pay slips, and that the underpayment of employees had arisen as the result of a misunderstanding of the correct award classification.

The employer was keen to engage with FWO to ensure he fully understood the issues we had identified. We explained the differences in classification levels in the Restaurant Industry Award as well as the minimum requirements for pay slips content as detailed in the Fair Work Regulations.

We also ensured that the employer was provided with supporting educational information that included a guide to pay slips and record-keeping, a pay slip template, and the award guide. Additionally, we promoted a number of key resources to assist the business 'get it right' into the future including our Pay and Conditions Tool, My account and our Online Learning Centre.

The size of the business, as well as the employer's willingness to engage with FW and rectify any issues were factors we took into account when deciding on the appropriate response to the range of issues we found during the audit. The business was issued with a minor infringement penalty for the pay slip contravention and subsequently rectified all underpayments.

Case Study 2 – The value of education

Inspectors visited a newly opened restaurant in Harris park and interviewed staff on-site. The employer was not a member of a business association and their only source of professional workplace relations advice was their accountant.

When we raised the low rates of pay we had identified through our on-site interview of a casual food and beverage attendant, it became clear in discussions with the accountant that they had a limited understanding of employee entitlements and did not fully grasp their responsibilities under workplace law.

We educated the accountant on this responsibility, and explained the applicable classifications and pay rates for staff. Having confirmed that the business had no on-site record-keeping arrangements in place, we ensured that the accountant understood the importance of this obligation and provided templates for the business to use. Additionally, we clarified how annual salaried arrangements worked and provided essential information to the accountant on the award provisions regarding award flexibility.

When the FWO assessed the employee records after providing the information to the accountant, the correct pay rates were being paid and the records and pay slips generated demonstrated our engagement resulted in improved awareness of employee entitlements.

Through working with accountants who represent businesses such as this we aim not only to ensure the long term compliance of employers, but to improve their professional knowledge and their capacity to promote compliant business practices across the range of businesses they support.

Conclusions

The campaign revealed that 64% of businesses in the region were not compliant with their workplace obligations, 42% of businesses were not paying their employees correctly, and 36% of businesses were compliant with their record-keeping and pay slip obligations. When compared with the FWO's overall non-compliance rate from our campaigns across 2016-17 financial year of 47%, the region will continue to be a focus of the FWO as we look to lift compliance in the area.

With a high non-compliance rate (64%) and significant usage of compliance and enforcement tools in this region, there is need for further activities to monitor compliance levels and identify whether the FWO's engagement in the region will change behaviours. All businesses found to be non-compliant during this campaign will be considered for inclusion in the FWO's ongoing National Compliance Monitoring Program; a program the FWO has developed to regularly check back on businesses that have been found to be non-compliant in campaign activities.

Businesses that were not members of industry or employer associations were found to be less likely to comply with their workplace relations obligations than member businesses. This demonstrates the importance of the FWO's continuing focus on providing advice and assistance to unaffiliated businesses (those who are not members of an industry or employer organisation) particularly in locations such as Western Sydney where, anecdotally, the proportion of unaffiliated businesses is high.

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

Providing targeted resources for CALD employees and employers

Given the demographic composition of the region, the FWO will continue to ensure that employers of CALD backgrounds are informed and supported through our activities and tailored resources, aimed at increasing awareness and knowledge of Australian workplace laws.

To provide this support, the FWO recognises the importance of reaching out to CALD communities to raise awareness of the free help we can provide to both employers and employees. The FWO regularly seeks opportunities to engage with diverse communities and their representatives and intermediaries, including support services and community organisations.⁴ Further, since the

⁴ For example, in 2016 and 2017 the FWO implemented a Chinese Australian Engagement Strategy and Korean Australian Engagement Strategy to connect with employers and employees within these communities.

conclusion of the campaign the FWO has updated the suite of online tools and resources to help those from a non-English speaking background understand their workplace rights and obligations.

This includes:

- [Factsheets](#) available in 30 different languages.
- [Anonymous reporting](#) is available in 16 languages.
- The [Record My Hours app](#) is available in 17 languages.
- [FWO's YouTube Channel](#) has videos about working in Australia in different languages, including 6 videos about the National Employment Standards.
- [Short videos](#) in various languages that explain Australia's workplace laws to help employees and employers understand their entitlements and obligations.

The FWO's website, www.fairwork.gov.au, can also now be instantly translated into 40 languages, providing support to migrant workers, visa holders, international students and business owners where English is a second language.

Workplace participants seeking advice from the FWO can also speak to us in their preferred language through the Translating and Interpreting Service connected to the FWO's Infoline.

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 Western Sydney Campaign. For further information 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.