



Fair Work
OMBUDSMAN



Western Australia - Southern Perth and Albany-Manjimup Regional Campaign Report

April 2018

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Table of contents

Table of contents.....	2
Infographic	3
Summary	4
The campaign’s methodology	6
Key findings – Southern Perth	7
Key findings – Albany and Manjimup.....	10
Compliance and enforcement outcomes.....	13
Conclusion	17
About the Fair Work Ombudsman	18

WESTERN AUSTRALIA - SOUTHERN PERTH AND ALBANY-MANJIMUP REGIONAL CAMPAIGN

WHAT DID WE FIND?

SOUTHERN PERTH



ALBANY - MANJIMUP



LITIGATION RECOVERIES

\$300 491 for 71 employees from 3 businesses

\$161 270 Penalties

WHERE DID WE GO?

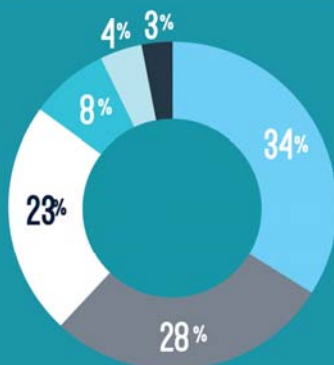


295 BUSINESSES AUDITED



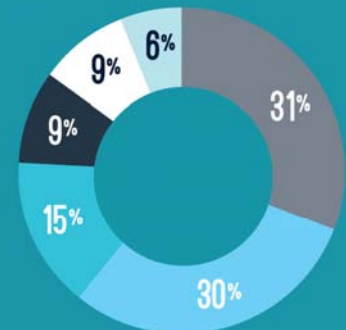
ALBANY
ARMADALE
BALDIVIS
BEDFORDALE
CENTENNIAL PARK
DENMARK

KWINANA
LOCKYER
MANJIMUP
ORANA
ROCKINGHAM
ROLEYSTONE



INDIVIDUAL CONTRAVENTIONS IDENTIFIED

- Hourly Rates
- Pay Slips
- Penalty Rates
- Other
- Record-Keeping
- Overtime



12

FORMAL CAUTIONS



14

INFRINGEMENT NOTICES



4

COMPLIANCE NOTICES



3

LITIGATIONS

Summary

This report provides the details and outcomes of a campaign the Fair Work Ombudsman (FWO) undertook across two different geographic regions of Western Australia, including:

- Southern Perth, encompassing the Armadale, Kwinana and Rockingham; and
- Albany and Manjimup, examining Albany, Denmark, Manjimup and their surrounding regions of the south-western tip of Western Australia.

These regions of Western Australia were identified as an appropriate focus for an FWO campaign based on an analysis of a range of demographic data about the areas, including:

- The number of new employees in the Southern Perth region increased by around 55 200 in the five years prior to 2014. The leading growth sector was the professional, scientific and technical services industry (approximate growth of 12 500 new employees)¹.
- Growth in Southern Perth was projected across numerous industries of interest to the FWO, including Administrative & Support Services, Construction and Accommodation & Food Services².
- While there was a reduction of 13 300 employees in the Albany region (mostly attributable to the mining sector), other industries in Albany saw an increase. Most significantly, the financial and insurance industries with an increase of 2 600 employees³.
- Both Albany (\$41 393) and Manjimup (\$43 650) had the lowest median incomes in Western Australia⁴.

¹ Department of Employment, Labour market information portal, Industry Employment Profiles

² Department of Employment, Labour market information portal, Industry Employment Profiles – Australian regions (four quarter averages of Original Labour Force Survey Data, ANZSIC Divisions)

³ Australian regions (four quarter averages of Original Labour Force Survey Data, ANZSIC Divisions)

⁴ ABS – Census 2011

Of the 148 businesses audited in the Southern Perth region during the campaign:

- 57 (39%) businesses were not compliant with all requirements
- 39 (26%) businesses were not paying their employees correctly
- 28 (19%) businesses were not compliant with record-keeping and payslip requirements
- \$40 391 was recovered from 21 businesses for 73 employees.

Of the 147 businesses audited in the Albany-Manjimup region during the campaign:

- 76 (52%) businesses were not compliant with all requirements
- 50 (34%) businesses were not paying their employees correctly
- 40 (28%) businesses were not compliant with record-keeping and pay slip requirements
- \$47 379 was recovered from 28 businesses for 147 employees.

A number of compliance and enforcement outcomes resulted from the campaign, including:

- 12 formal cautions were issued
- 14 infringement notices were issued totalling \$6 660
- four compliance notices were issued recovering \$31 324.17 for 20 employees
- the commencement of three litigations as a result of the campaign recovering \$300 491 from three businesses for 71 employees.

The campaign uncovered serious levels of non-compliance that lead to the FWO commencing litigations against three businesses located in the South Perth region. The litigations related to two outlets of the Han's Café franchise in Armadale and Rockingham and a security company, also based in Rockingham. The litigations resulted in total penalties of \$161 270 against the businesses, the Directors and managers and secured back payments of \$300 491 to 71 employees from the three businesses.

The campaign's methodology

In preparation for the campaign, the FWO contacted key stakeholders in the designated regions to discuss the planning, design and delivery of the campaign. The campaign was promoted in both regions, through local media outlets, including The Weekend Courier (Rockingham) and The Comment News (Perth) in Southern Perth, and Manjimup Bridgetown Times, Big Rigs Magazine, ABC radio South West WA; and online with Medianet in the Albany-Manjimup region.

Businesses selected for participation in the campaign were selected randomly.

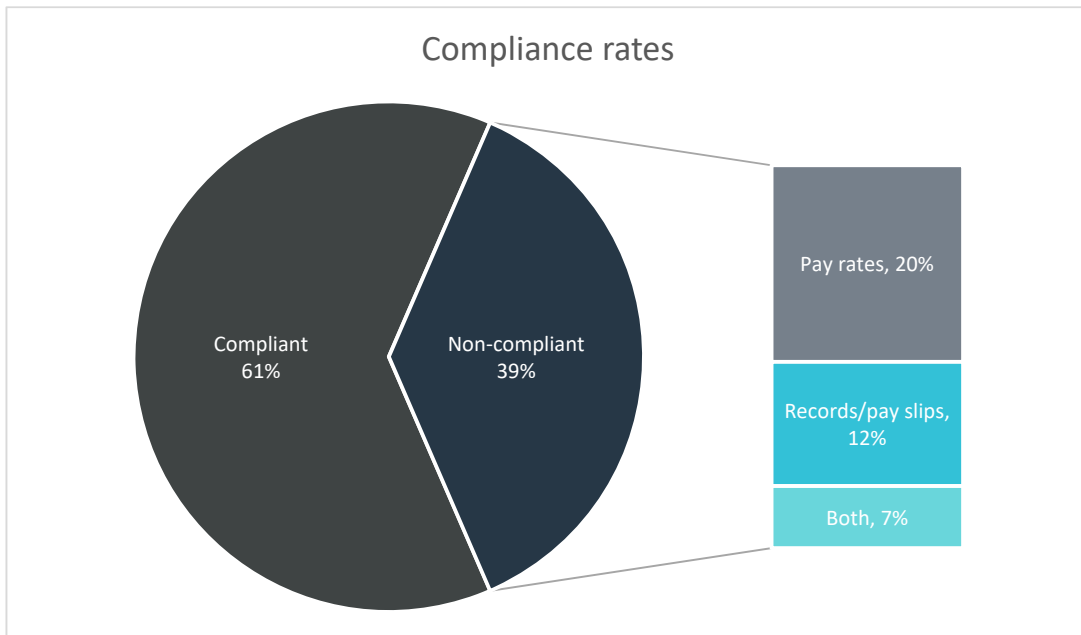
Fair Work Inspectors contacted the selected businesses across the two regions and assessed time and wages records for compliance with the *Fair Work Act 2009* (the Act), the *Fair Work Regulations 2009* (the Regulations) and the applicable award or agreement. Where breaches were identified, inspectors required businesses to rectify the issue and provide proof of having done so (including back-paying any underpaid employees).

The predominant modern awards applicable to businesses in the region were:

- Clerks - Private Sector Award 2010
- Electrical, Electronic and Communications Contracting Award 2010
- General Retail Industry Award 2010
- Hair and Beauty Industry Award 2010
- Hospitality Industry (General) Award 2010
- Manufacturing and Associated Industries and Occupations Award 2010
- Pastoral Award 2010
- Real Estate Industry Award 2010
- Restaurant Industry Award 2010
- Road Transport & Distribution Award 2010.

Fair Work Inspectors also provided businesses with information and resources to help them comply with their obligations under Commonwealth 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](#), [My account](#) and [online training courses](#).

Key findings – Southern Perth



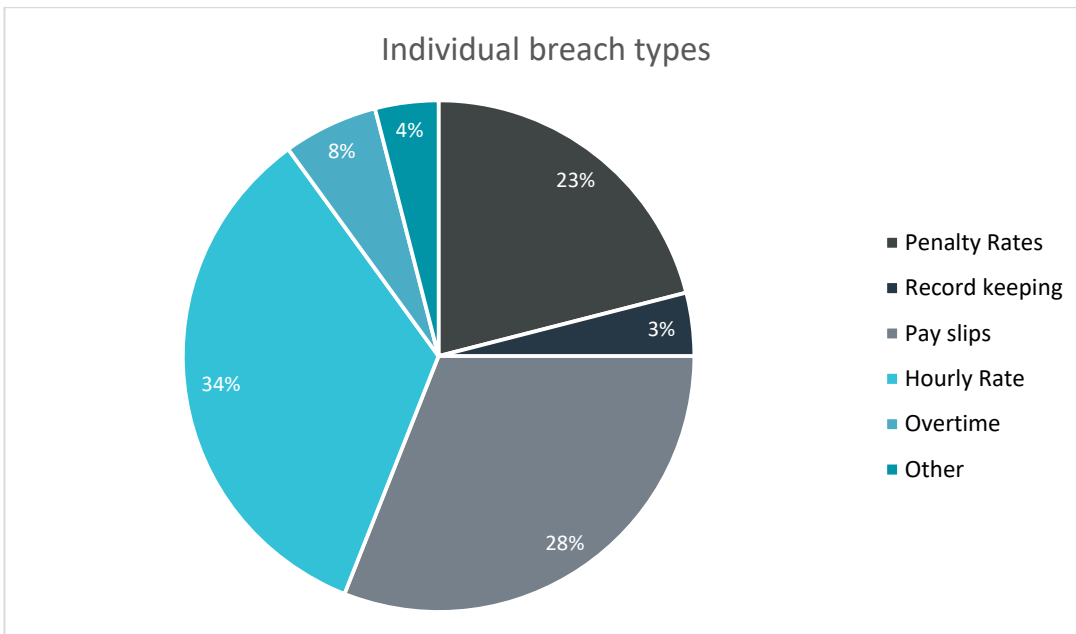
Of the 148 businesses audited during the campaign:

- 57 (39%) businesses were not compliant with all requirements
- 39 (26%) businesses were not paying their employees correctly
- 28 (19%) businesses were not compliant with record-keeping and payslip requirements
- \$40 391 was recovered from 21 businesses for 73 employees.

Of the 57 businesses that were not compliant and had at least one breach:

- 29 (20%) had breaches relating to pay rates
- 18 (12%) had breaches relating to pay slips and/or record-keeping
- 10 (7%) had both pay rates and record keeping breaches.

Individual breach types



The 57 businesses that were found non-compliant had a total of 92 individual breaches.

Of these individual breaches, the most common breaches related to:

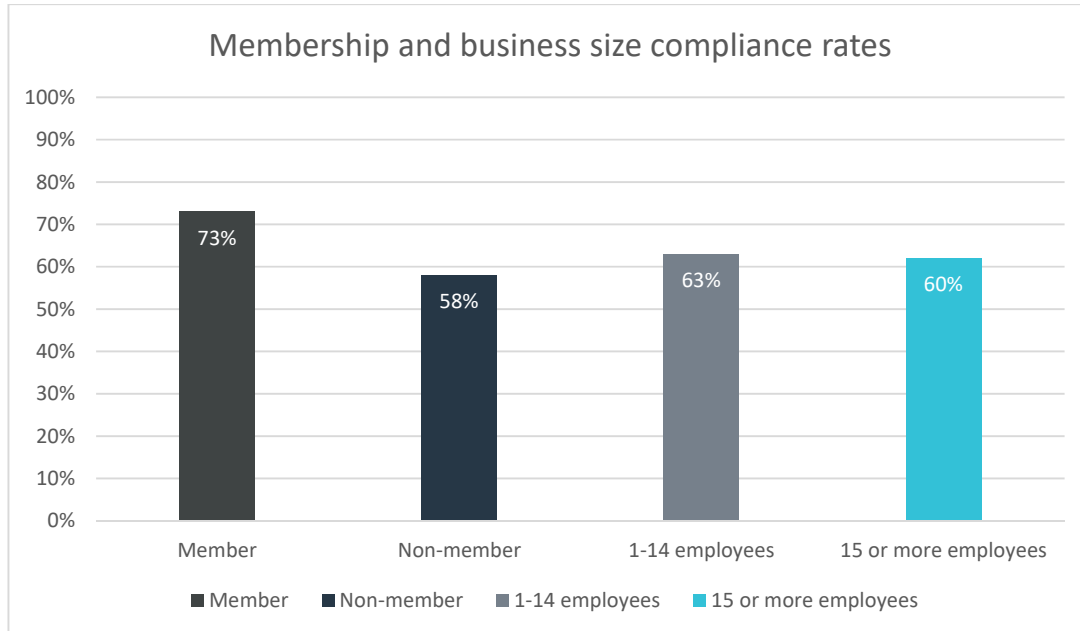
- underpayment of wages (34%)
- payslips (28%)
- penalty rates (23%).

The majority of payslip breaches related to errors concerning the contents of pay slips missing an item, such as superannuation fund name, employer name or ABN.

Individual monetary recovery amounts ranged from \$45 to an individual employee to \$12 524.81. The majority of recoveries involved less than five employees.

A total of \$300 491 was recovered in back payments as a result of the three litigations undertaken by the FWO; \$205 408 from a security company and \$27 920 and \$67 161 from two café franchisees. Further details of these matters are outlined below.

Membership and business size

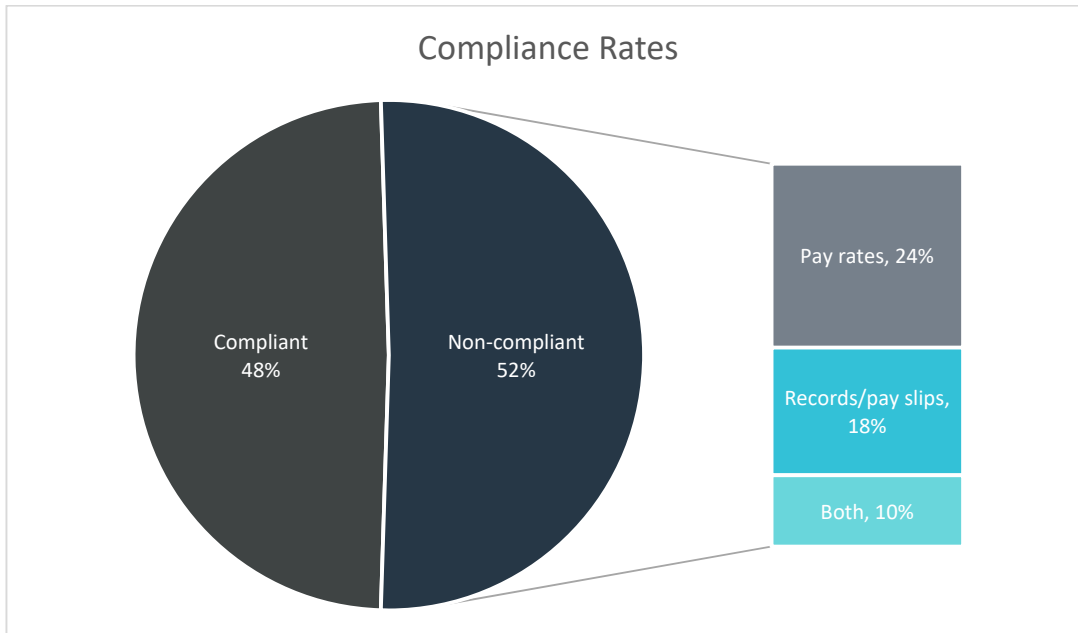


The FWO finds that businesses are more likely to be compliant with workplace laws when they have access to specialised workplace relations advice such as through membership to an employer organisation, or access to accounting or legal advice or a dedicated human resources professional within the business. 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 (73%) than businesses that were not members (58%). These rates are higher than we usually find across our campaigns where 65% of members were compliant and 49% of non-members were compliant across our campaigns in 2016-17.

In the Southern Perth region, larger businesses (with 15 or more employees) and smaller businesses (with less than 15 employees) had similar compliance rates. Larger businesses had a compliance rate of 60% while smaller businesses had a compliance rate of 63%. The FWO generally finds small businesses have lower compliance rates than larger businesses.

Key findings – Albany and Manjimup



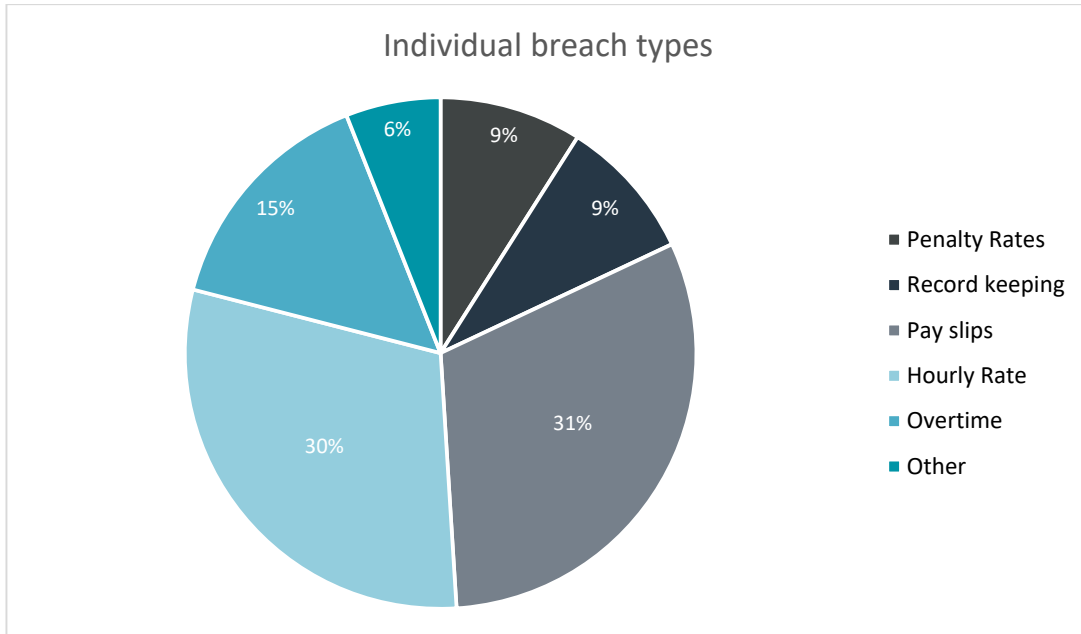
Of the 147 businesses audited:

- 76 (52%) businesses were not compliant with all requirements
- 50 (34%) of businesses were not paying their employees correctly
- 40 (28%) businesses were not compliant with record-keeping and pay slip requirements.
- \$47 379 was recovered from 28 businesses for 147 employees.

Of the 76 businesses that were not compliant and had at least one breach:

- 36 (24%) had breaches relating to pay rates.
- 26 (18%) had breaches relating to pay slips or record-keeping.
- 14 (10%) had both pay rate and records/pay slips breaches.

Individual breach types



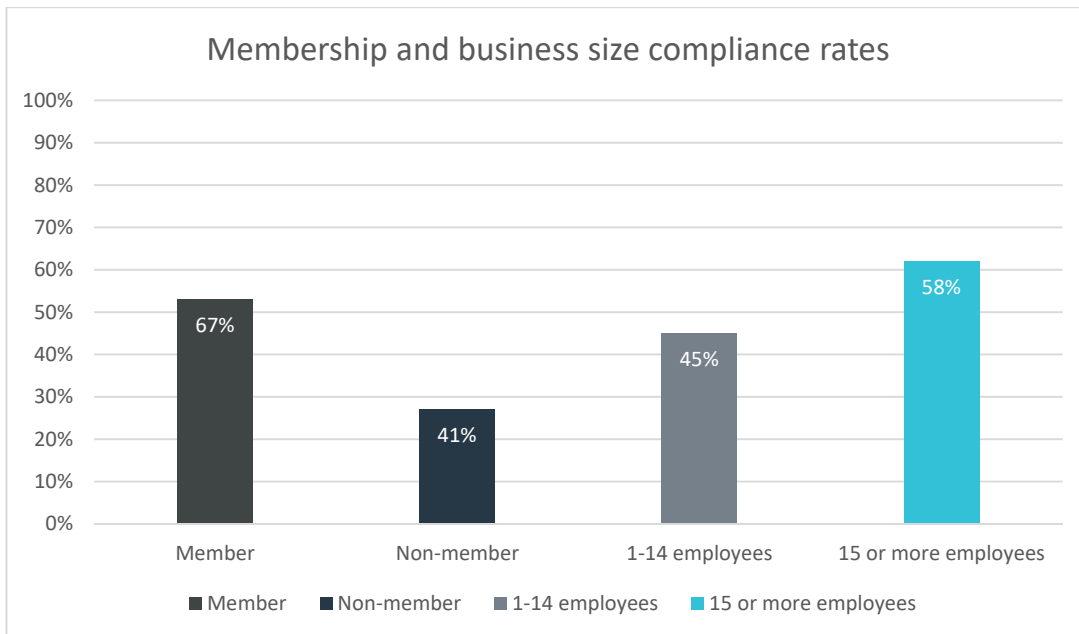
The 76 businesses that were non-compliant had a total of 106 individual breaches.

The most common breaches related to:

- pay slips (31%)
- underpayment of hourly rates (30%)
- overtime (15%)

The individual recovery amounts ranged up to \$8751. In most cases the underpayments involved a small number of employees per business and were as a result of the employer making an error such as missing the July annual wage increase.

Membership and business size



Businesses that were identified as members of an industry or employer association had a higher compliance rate (67%) than businesses that were not members (41%).

Larger businesses (with 15 or more employees) had a higher compliance rate (58%) than smaller businesses (45%). These findings are generally consistent with results across FWO campaigns, the rates in this campaign are lower.

Compliance and enforcement outcomes

The compliance and enforcement outcomes that resulted from the campaign included:

- 12 formal cautions
- 14 infringement notices were issued totalling \$6 660
- four compliance notices were issued recovering \$31 324.17 for 20 employees
- three litigations⁵.

Case study – Formal Caution

Twelve formal cautions were issued to employers during the campaign. Formal cautions are a written warning issued to an employer when the FWO has found non-compliance and seeks 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 the business was issued with a formal caution will be taken into account in deciding whether to commence civil proceedings against the business and may be used as evidence in any penalty determinations.

Fair Work Inspectors audited an architectural firm in the Albany-Manjimup region and found that there were inconsistencies with some aspects of their record keeping, in particular, a lack of records concerning hours worked as overtime. The business offered employees time off in lieu (TOIL) of payment for any overtime worked, however they had not kept records regarding the amount of overtime their staff had accrued.

In discussing the matter with the office manager, inspectors were advised that the business took an informal approach to these records due to the small size of the business and the good relationships between staff and management.

The director of the business was advised of her obligations to keep time records, particularly regarding TOIL. The business was issued with a Formal Caution detailing the obligations of the business as an employer under the FW Act.

⁵ [FWO Media Release, Sureguard Security Pty Ltd, 20 February 2018](#)
[FWO Media Release, Han's Cafe Armadale and Rockingham franchise outlets, 20 March 2018](#)

Case study – Infringement notice

Fourteen infringement notices were issued to employers during the campaign resulting in the payment of \$6 600 in fines. 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.

Fair Work Inspectors audited a hairdressing business in the Southern Perth region. After receiving limited co-operation from the employer initially, a Statutory Notice-to-Produce was issued to recover the time and wage records from the business.

Upon receiving the records, it became apparent that the time records were insufficiently kept, pay slips were not provided to staff and pay records were not kept. This was a breach of the Regulations. As the inadequately kept records made it difficult for inspectors to accurately test for compliance against the Award, the business was issued with an Infringement Notice and fined \$900.

Case Study - Compliance notices

Four compliance notices were issued to employers 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 where it can seek significant financial penalties against a business. A total of \$31 324.17 was recovered from four businesses for 20 employees as a result of the compliance notices issued.

Fair Work Inspectors audited a winery in the Albany-Manjimup region. While assessing the wage records, they discovered that workers were being paid a flat hourly rate that was below the minimum award rate under the *Wine Industry Award 2010*. They were also working weekends and public holidays with no additional penalty rates.

Inspectors calculated the wages paid to three members of staff and determined an underpayment of \$8 750.63. A Compliance Notice was issued to the employer requiring the rectification of all wages denied. The Compliance Notice was complied with.

Case study – Litigation

Three litigations were filed against businesses during the campaign due to the seriousness of the non-compliance uncovered. Litigation is a legal process where the FWO files against a company and/or individual in a court of law seeking financial penalties against the employers for allegedly breaching the *Fair Work Act 2009*. Litigation is the most significant enforcement tool used by FWO and is reserved for those serious matters that are in the public interest as detailed in the [FWO Litigation Policy](#).

Litigation against *Phua and Foo Pty Ltd* and *Tac Pham Pty Ltd* trading as *Han's Cafe*

In 2017, the FWO commenced proceedings against two Han's Café franchisees as a result of the campaign's findings:

- Phua and Foo Pty Ltd, the legal entity operating a Han's Café franchise, located at Jull Street in Armadale; and
- Tac Pham Pty Ltd, the legal entity operating a Han's Café franchise, located in Rockingham.

Fair Work Inspectors found that both franchisees were paying flat rates of pay to staff that were insufficient to cover minimum entitlements under the *Restaurant Industry Award 2010*. Employees at both of the franchises were employed in various roles including kitchen attendants, cooks and food and beverage attendants.

All workers at both outlets have been back-paid in full as a result of the legal action.

[Phua and Foo Pty Ltd – Armadale outlet](#)

Phua and Foo Pty Ltd had underpaid 27 employees \$67 161 over nine months at the Armadale outlet, including one junior aged 18-19. On 22 February 2018, [penalties amounting to \\$35 000](#) were imposed against the business Phua & Foo Pty Ltd. In addition, an order was made by the Court requiring the company to arrange workplace relations training for its managerial staff.

The court found the conduct was serious because it was the product of a deliberate decision by the company to deny weekend penalty rates.

[Tac Pham Pty Ltd – Rockingham outlet](#)

Tac Pham Pty Ltd had underpaid 22 employees, an amount of \$27 920 at the Rockingham outlet, including nine juniors aged between 17-19 and seven overseas workers, mostly international students from Vietnam. The Rockingham outlet also contravened pay slip laws.

On 22 February 2018, the court imposed a penalty of **\$37 500** against the Rockingham business Tac Pham Pty Ltd and a separate amount of **\$7 500** against the General Manager, Ms Cuc Ti Thu Pham.

In imposing the penalties, the court balanced the seriousness of the conduct, the vulnerability of the employees, and Ms Pham's reckless disregard of workplace obligations, against the Respondents' contrition, cooperation and rectification.

The underpayments at the Rockingham outlet occurred despite the FWO having advised Mrs Pham and Tac Pham Pty Ltd in 2013 about minimum award wages after receiving an underpayment allegation from a worker. Justice Siopis found that Mrs Pham “simply chose to disregard her dealings with the FWO in November 2013 and continued to operate the defective wages payment system which she had inherited, recklessly indifferent as to whether she was, thereby, compliant with the Restaurant Award conditions.” The judge set the penalties against the business and Mrs Pham as a consequence of the serious nature of the breaches and to deter other café/restaurant owners from disregarding legal minimums. The judge also ordered workplace relations training for managerial staff.

Litigation against *Sureguard Security Pty Ltd*

In 2017, the FWO commenced proceedings against Sureguard Security Pty Ltd, a security services company, operating in Rockingham.

During the campaign, Inspectors found that the security guards employed by the business were being paid flat rates of pay with no penalties, shift loadings or other entitlements, however, the flat rate paid was not high enough to cover the penalty and shift loadings that should have been paid.

The security guards, including 13 who performed permanent night shifts, were paid a flat hourly rate between \$21.50 and \$24 for static guard work and \$25 for patrol work. This led to the security guards being underpaid the minimum hourly rates, including numerous penalties, loadings and overtime payments contained in the *Security Services Industry Award 2010*.

Underpayments for individual workers ranged from \$227 to \$20 174. As a result of audits undertaken during the campaign, Sureguard back-paid 22 employees a total of **\$205 408.40** it had underpaid them between December 2014 and January 2016. It did this once the legal action had commenced.

On 22 December 2017, the court imposed a penalty of **\$81 720** against Sureguard Security Pty Ltd (the Company) and its sole Director, Mr Gary Crowther. In his judgement on the matter, Justice Michael Barker dismissed Sureguard’s submission that it thought paying flat rates above the lawful minimum for ordinary hours would counteract the different rates of pay for other periods as “at best, a misunderstanding of the law, but a lame excuse” and that whilst there may not have been a deliberate plan to circumvent the law, there was no real excuse for the contraventions, which occurred without regard to the minimum award requirements. Justice Barker also ordered Suregard to commission workplace relations training for its managers.

Conclusion

While Albany-Manjimup had a higher non-compliance rate overall, the FWO commenced three litigations against businesses located in the Southern Perth region due to the seriousness of the breaches. The litigations recovered large underpayments for employees, totalling **\$300 489** and penalties were secured against the directors/manager of the businesses totalling **\$161 270**.

The results of this campaign will inform future education and audit activities in the regions. Given the significant nature of the non-compliance that has been uncovered in the campaign, the FWO will ensure that all businesses found to be non-compliant during this campaign will be included in as part of the FWO's ongoing National Compliance Monitoring Program. This is a program the FWO has developed to regularly check on businesses that have been found to be non-compliant in campaign activities.

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, and also encourages businesses to use information, tools and resources available at www.fairwork.gov.au that are designed to make compliance easier.

The website contains online learning modules that cover an array of topics, including a record-keeping and payslip module, which helps employers (especially small business without HR support) learn how to make, update and manage employment records for their business.

Employers involved in the campaign are also provided with information about how they can keep up to date and receive personalised information about workplace law and employment issues by registering for [My account](#) and the [FWO's employer newsletter](#).

The FWO will continue to work with businesses across Western Australia to encourage sustained, conscious compliance with workplace laws.

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 both the Western Australia - Southern Perth and Albany-Manjimup Regions 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 Glenn Jordan, Executive Director - Proactive Compliance and Education at glenn.jordan@fwo.gov.au.