



Darwin City and Surrounds Campaign Report

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NT DARWIN CITY AND SURROUNDS

WHAT DID WE FIND?



54% of businesses were non-compliant with their obligations under workplace laws



46% of businesses were not paying their employees correctly



30% of businesses were non-compliant with record keeping and pay slip requirements



\$20 772 recovered for 44 employees from 17 businesses

WHERE DID WE GO?

54 BUSINESSES
AUDITED



CULLEN BAY NIGHTCLIFF
DARWIN CITY PARAP
FANNIE BAY STUART PARK
LARRAKEYAH WINNELLIE

COMPLIANCE AND ENFORCEMENT OUTCOMES



1

FORMAL
CAUTION



4

INFRINGEMENT
NOTICES



1

COMPLIANCE
NOTICE

Summary

This report provides results from an education and compliance campaign undertaken in Darwin City and surrounding suburbs of the Northern Territory.

A campaign was commenced in response to the higher number of requests for assistance received by the Fair Work Ombudsman (FWO) from these suburbs (Cullen Bay, Darwin City, Fannie Bay, Larrakeyah, Nightcliff, Parap, Stuart Park and Winnellie) in the years preceding the campaign.

The Campaign found of the 54 businesses audited:

- 29 (54%) were not compliant with all requirements of workplace laws
- 25 (46%) were not paying their employees correctly
- 16 (30%) were not compliant with record-keeping and pay slip requirements

The campaign recovered **\$20 772** from 17 businesses on behalf of 44 employees.

One formal caution, one compliance notice and four infringement notices were issued during the campaign.

The campaign's methodology

The FWO liaised with key stakeholders in the region to discuss the planning, delivery and promotion of the campaign. The campaign received media coverage through NT News and ABC Radio – Darwin and Alice Springs. Importantly, local media coverage assisted in spreading information about both the campaign and the FWO beyond businesses included in the campaign.

Fair Work Inspectors contacted businesses throughout the campaign area 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, Fair Work Inspectors required the businesses to rectify the issue and provide proof of having done so (including back-paying any underpaid employees).

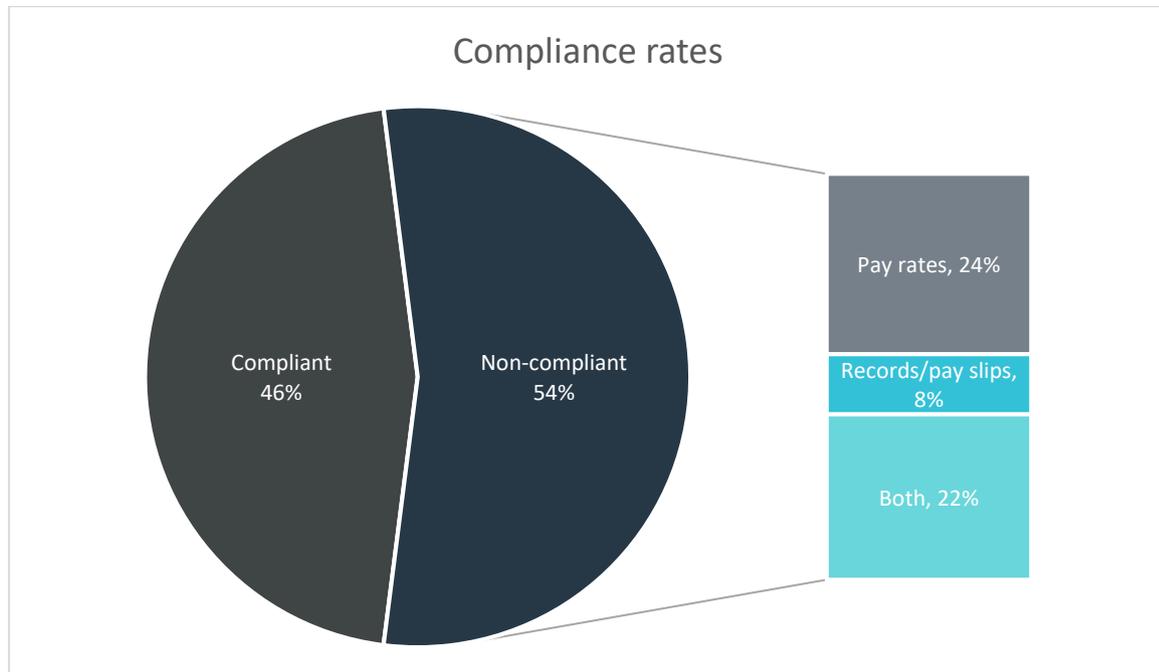
The predominant modern awards applicable to businesses audited in the campaign were:

- Health Professionals and Support Services Award 2010
- General Retail Industry Award 2010
- Restaurant Industry Award 2010
- Fast Food Industry Award 2010
- Hair and Beauty Industry 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 free online resources 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

Overall, the FWO found that 29 (54%) of the 54 businesses audited in the campaign were not compliant with their obligations under workplace laws.

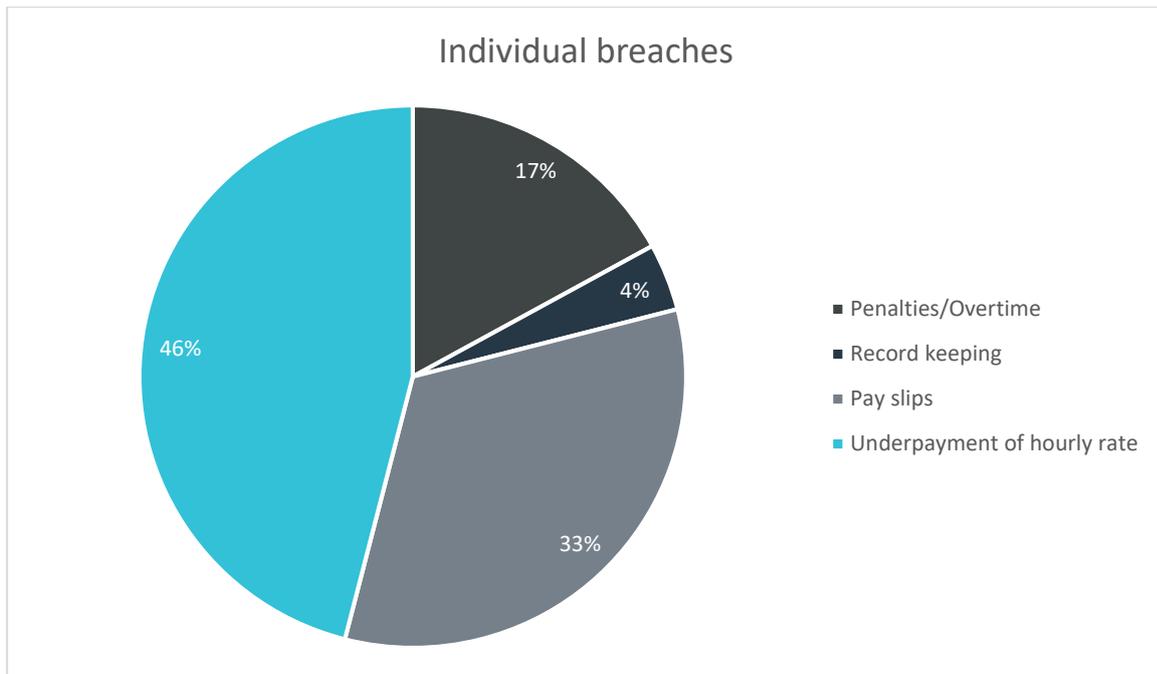


Of the 29 businesses that were non-compliant:

- 13 (24%) had breaches relating to pay rates
- 4 (8%) had breaches relating to pay slips or record-keeping
- 12 (22%) had both pay rate and record/pay slip breaches.

Of all 54 businesses audited:

- 25 (46%) businesses were not paying their employees correctly
- 16 (30%) businesses were not compliant with record-keeping and pay slip requirements
- \$22 772 was recovered from 17 businesses on behalf of 44 employees.



The 29 businesses that were non-compliant with workplace laws had a collective total of 46 individual breaches, where 63% related to monetary-based breaches and 37% related to non-monetary based breaches, such as payslip and record keeping errors.

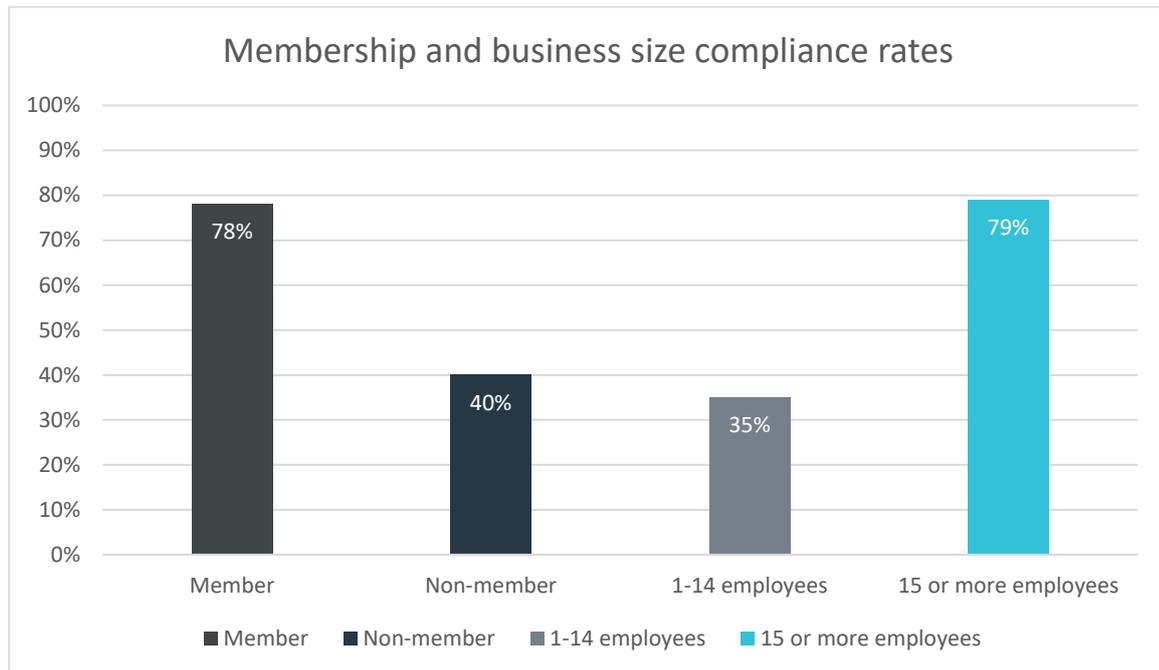
The most common breaches were:

- underpayment of hourly rates (46%)
- pay slips (33%)
- overtime/penalty rates (17%).

Individual recovery amounts for underpayments of wages ranged from approximately \$4 to more than \$4900.

Importantly, the Campaign did not disclose any evidence suggesting deliberate non-compliance, rather, the breaches were attributable to employers not getting the basics right such as award classifications or the need to issue pay slips in a timely manner and containing all the required information such as the superannuation fund name, employer name or ABN. In these instances, the businesses the FWO provided employers with information about how to ensure their pay slips were compliant with the Regulations.

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 through membership to an employer organisation or access to an accountant, legal professional or a dedicated human resources practitioner within the business. Larger businesses are more likely 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 (78%) than businesses that were non-members (40%). This trend is consistent with the FWO's findings that members of industry or employer associations generally have higher compliance rates than non-members.

Also consistent with the FWO's findings in other campaigns, smaller businesses (with less than 15 employees) had a lower compliance rate (35%) as opposed to larger businesses (79%). Again, the strong compliance rate for larger businesses in the area indicates strong engagement and support with workplace relations issues.

Compliance and enforcement outcomes

Compliance and enforcement tools issued during the campaign included:

- one formal caution
- four infringement notices totalling \$900
- one compliance notice was issued to one business resulting in \$4988.16 back-pay for three employees.

These tools were used to remedy and deter future non-compliance as explained in the following case studies.

Case study – formal caution

Formal cautions are issued when the FWO has found instances of non-compliance and it is considered appropriate 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 (in writing) 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 a retail bakery as part of the campaign. The FWO had previously investigated an underpayment matter at the business after receiving a request for assistance from an employee. At the time, the employer resolved the matter voluntarily. The FWO included the business in this audit campaign to check its ongoing compliance.

During the audit, inspectors identified that further underpayments had been made to casual retail staff covered under the *General Retail Industry Award 2010*. Once the employer was made aware of the error, they back paid the affected four employees a total of \$380.80.

Although the employer back paid staff to resolve the underpayments, the FWO issued a formal caution to ensure it continued to keep updated on minimum wages and award conditions.

Case study – infringement notice

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.

Four infringement notices were issued, totalling \$900 in fines. An example of the type of matter the FWO might issue an infringement notice is provided below.

Fair Work Inspectors audited a hair and beauty business that had four employees. They found multiple breaches including a casual staff member not receiving the ordinary time and weekend rates required by the *Hair and Beauty Industry Award 2010*.

In addition, the pay slips provided to the employee were missing required details such as the ABN, business name and superannuation fund name.

The business was provided with current rates of pay, requested to rectify the underpayment and amend the pay slips to include the required information. The business corrected the underpayment and an infringement notice was issued for \$360 for failing to meet pay slip requirements.

Case study - compliance notices

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.

One compliance notice was issued during the campaign and resulted in three employees being back-paid a total of \$4988.16.

Fair Work Inspectors audited a café during the campaign, identifying employees were being paid incorrectly - at the rate of an introductory level - past the maximum three-month introductory period specified in the *Restaurant Industry Award 2010*.

In addition, employees were not being paid penalty loadings for weekends and pay slips did not provide details of the superannuation fund.

The employer stated that they had misinterpreted the classification descriptions under the award and the business was issued with a compliance notice due to the non-payment of penalty rates and required to back pay \$4988.18 to three employees for a 10-month period.

Conclusion

The campaign revealed 54% of businesses audited were not compliant with basic workplace obligations; 46% of businesses were not paying their employees correctly and 30% of businesses were not compliant with their record-keeping and pay slip obligations.

Businesses that were members of industry or employer associations were found to be more compliant with their workplace relations obligations than those businesses that were not members. This suggests that employer associations have a positive effect on compliance rates through ongoing member engagement and support. It also demonstrates the importance of FWO's continuing focus on offering advice and assistance to businesses, particularly to those who are not represented by a workplace relations practitioner.

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.

The FWO provides a range of free resources to educate employers on their obligations and encourages businesses to use the information, tools and resources available at www.fairwork.gov.au to ensure compliance with workplace laws. The FWO also encourages employers to contact the Fair Work Infoline and others, such as their employer association, for assistance and advice on workplace relations matters when they need more help. The Fair Work Infoline includes a dedicated Small Business Helpline to provide tailored advice to small business employers. It can be contacted on 13 13 94.

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 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 subscribing for [email updates](#).

FWO will continue to work with businesses across Darwin and the Northern Territory 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 and state level.

This report covers the background, method and findings of the Darwin City and surrounds 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.