



New South Wales mid-west and mid-north campaign report

June 2018

© Commonwealth of Australia, 2018

Table of contents

Table of contents.....	2
Infographic.....	3
Summary.....	4
The campaign’s methodology	6
Key findings.....	7
Compliance and enforcement outcomes	13
Conclusion.....	16
About the Fair Work Ombudsman.....	17

NSW MID-NORTH & MID-WESTERN REGIONAL CAMPAIGNS

WHAT DID WE FIND?

MID-NORTH COAST



MID-WESTERN REGIONAL



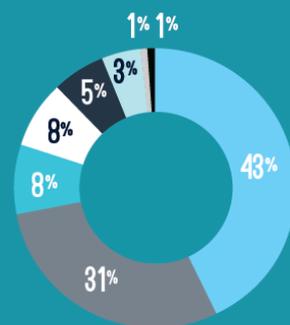
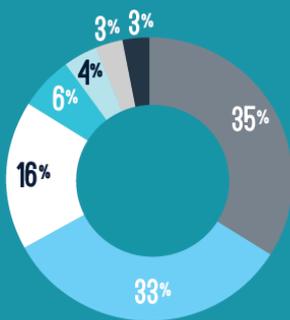
WHERE DID WE GO?



626 BUSINESSES AUDITED



- COONABARABRAN
- DUBBO
- GLOUCESTER
- GUNNEDAH
- MOREE
- NARRABRI
- PORT MACQUARIE
- TAREE
- WELLINGTON



19
FORMAL CAUTIONS

15
INFRINGEMENT NOTICES

10
COMPLIANCE NOTICES

1
ENFORCEABLE UNDERTAKING

Summary

This report outlines the results of education and compliance campaigns the Fair Work Ombudsman (FWO) undertook across two regions in New South Wales (NSW):

- mid-north coast including Port Macquarie and Taree; and
- mid-western region including Coonabarabran, Dubbo, Gunnedah, Moree, Narrabri and Wellington.

The FWO selected these regions of NSW as part of the agency's ongoing program of auditing businesses in regional locations across Australia to assess compliance with workplace laws and to provide education and assistance to employers and employees.

The audit recovered a total of **\$431 792** across both regions. The overall non-compliance results for the two areas audited were the same at 48%, with the key breaches identified also being the same type; pay rates, record keeping and pay slips.

The audits of 626 businesses disclosed:

- 299 (48%) businesses were not compliant with one or more requirements of workplace relations laws
- 203 (32%) businesses were not paying their employees correctly
- 96 (15%) businesses were not compliant with pay slip and record keeping requirements
- \$431 792 was recovered in back pay for 629 employees.

The campaign resulted in the following compliance and enforcement outcomes:

- one enforceable undertaking that recovered \$22 724.60 for 24 employees
- 10 compliance notices recovering \$63 903 in back pay for 37 employees from 10 businesses
- 15 infringement notices totalling \$5940 were issued
- 19 formal cautions.

The campaign's methodology

Before commencing the campaign, the FWO contacted stakeholders in the two regions to discuss the planning, delivery and promotion of the campaign.

The campaign received media coverage through ABC radio Tamworth, Star FM Dubbo and NBN Tamworth (television and online). Local media coverage ensured that information about both the campaign and the FWO spread beyond businesses included in the campaign and many businesses advised they had heard about the campaign before the FWO contacted them.

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

A range of modern awards were applicable to businesses audited in the campaign, with most covered by the following awards:

- General Retail Industry Award 2010
- Restaurant Industry Award 2010
- Hospitality Industry (General) Award 2010
- Manufacturing and Associated Industries and Occupations Award 2010
- Hair and Beauty Industry Award 2010

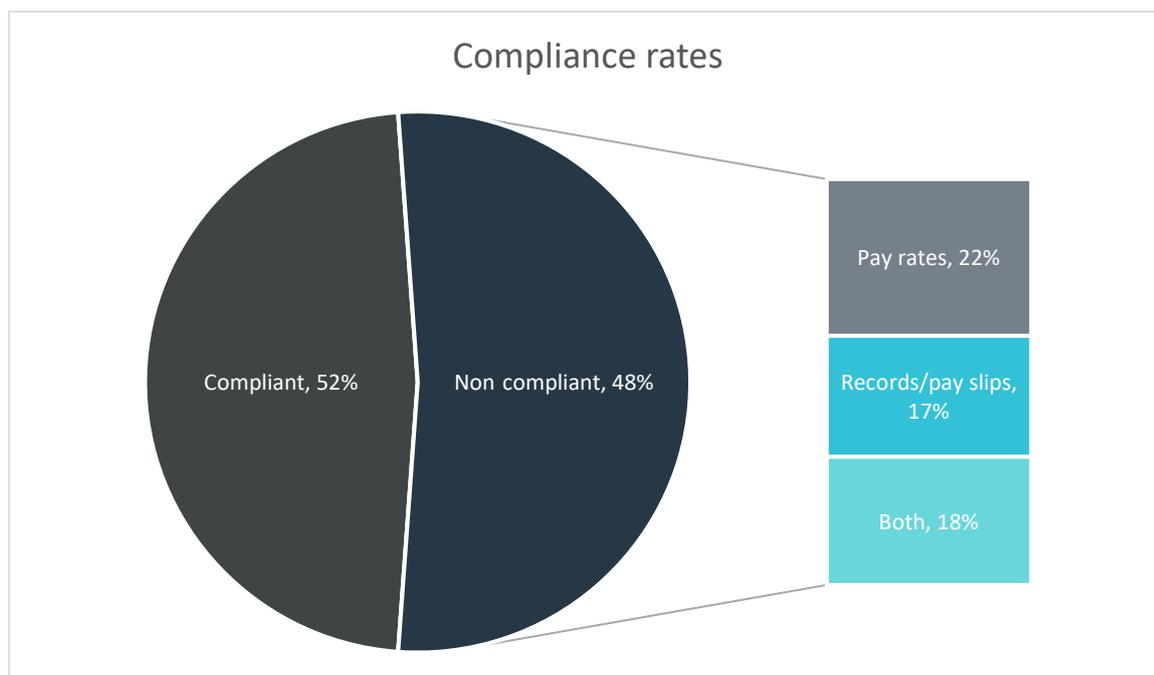
The campaign also examined business size, to test whether this impacted on the type of breaches identified. As an important element of these campaigns is to educate businesses about the workplace relations system, Fair Work Inspectors assessed the needs of each business and provided businesses with information and resources to help them comply with their obligations under Commonwealth workplace laws.

Fair Work Inspectors explained to businesses that our free online tools and resources can help equip businesses to self-manage and be compliant with their workplace relations obligations. Tools and resources for small business include [pay rates](#), content relating to [hiring employees](#), [My account](#) and [online training courses](#).

Since these campaigns, the FWO now offers businesses the [Small Business Showcase](#) which is a virtual hub containing a range of tools and resources to help small business owners meet their workplace obligations such as hiring lawfully, paying minimum wages and keeping accurate records.

Key findings – mid-north coast

The campaign found that 147 of the 307 businesses were not compliant with their obligations under workplace laws.



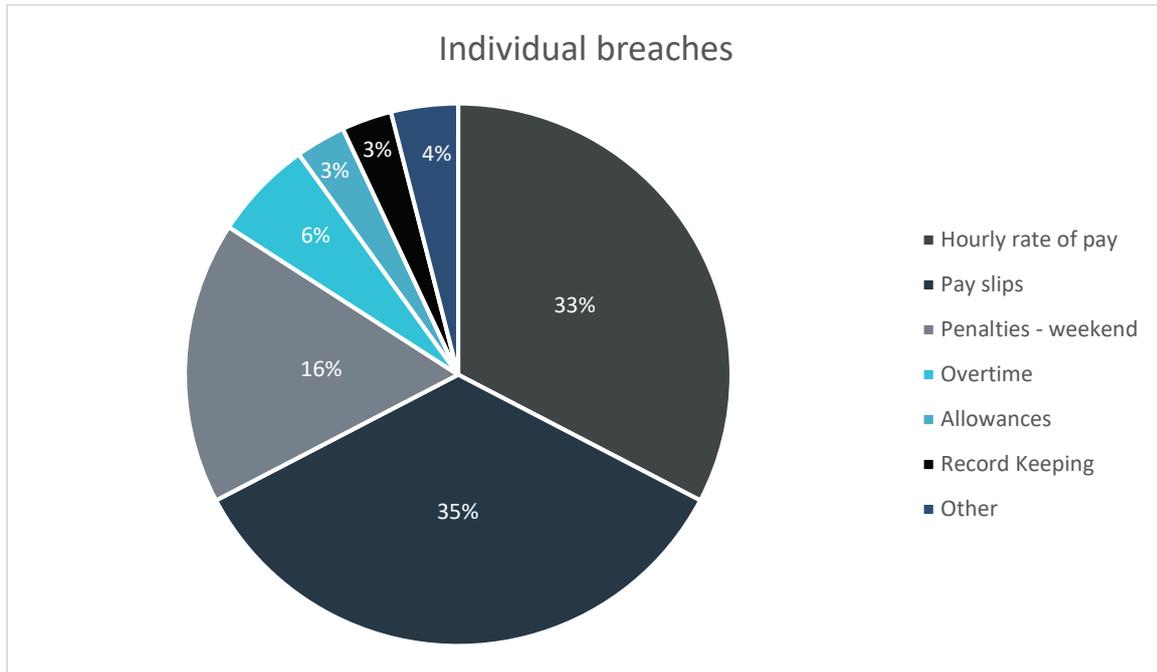
Of the 147 non-compliant businesses:

- 69 (22%) had breaches relating to pay rates
- 51 (17%) had breaches relating to records/pay slips
- 27 (9%) had both pay rate and record/pay slip breaches.

This means that of the 307 businesses:

- 96 (31%) of businesses were not paying their employees correctly
- 78 (25%) of businesses were not compliant with record keeping and payslip requirements.
- \$229 565 was recovered in back pay from on behalf of 365 employees.

Individual breach types



The 147 non-compliant businesses had a total of 209 individual breaches. The most common breaches were pay slips (34%), wages (33%) and penalty rates (16%).

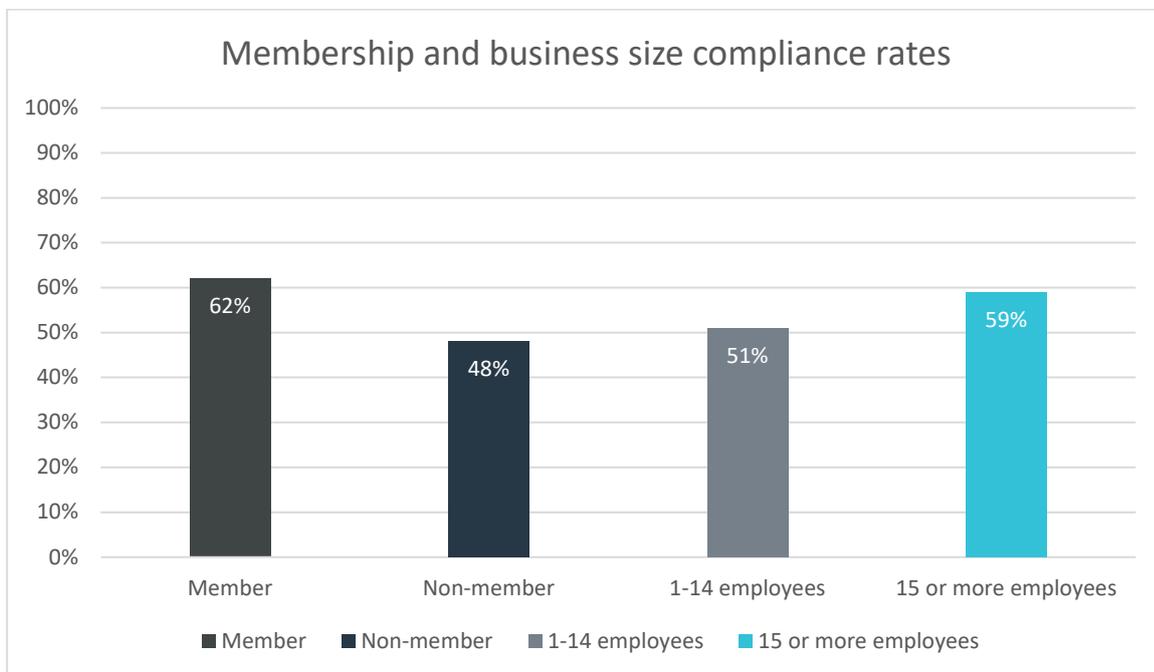
The individual recoveries ranged from \$14 to nearly \$25 000 in one case. In most cases, the underpayments involved one to three employees per business and were a result of employers missing minimum wage changes under the annual wage review that is applicable from 1 July each year, or misinterpreting the applicable award or agreement.

The nature of the pay slip breaches related to details missing on the payslip such as the superannuation fund name, employer name or ABN.

Membership and business size

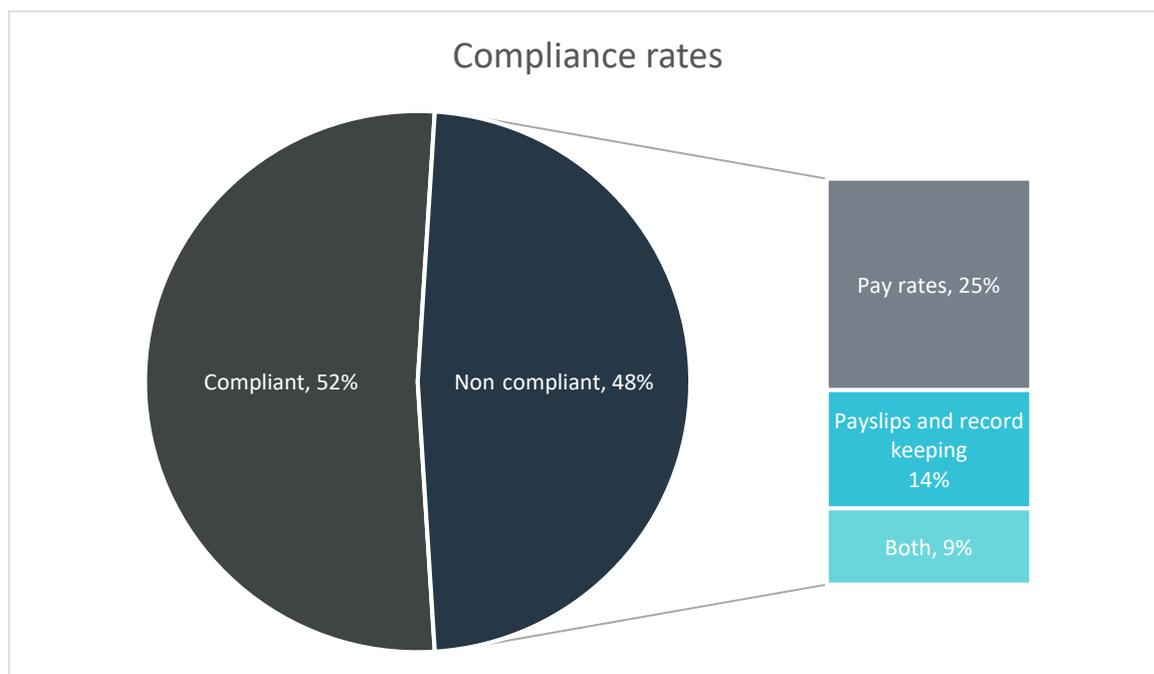
Businesses that were members of an industry or employer association had a higher compliance rate (62%) than businesses that were non-members (48%) which is consistent with the FWO’s experience across previous campaigns.

The campaign found that small and large businesses in the area had similar compliance rates, where larger businesses (with 15 or more employees) had a compliance rate of 59% and small businesses had a compliance rate of 51%. This is consistent with FWO audit results, where larger businesses are more often compliant than small businesses; often because larger businesses have the resources to access dedicated workplace relations advice and assistance.



Key findings – mid-western region

In the mid-western region, 152 of the 319 businesses audited of businesses were not compliant with their obligations under workplace laws. The results in the mid-western region are similar to those found on the mid-north coast, where the overall compliance result for the two areas audited was 52%, with the key breaches identified also being of the same type – e.g. pay rates, record keeping and pay slips.



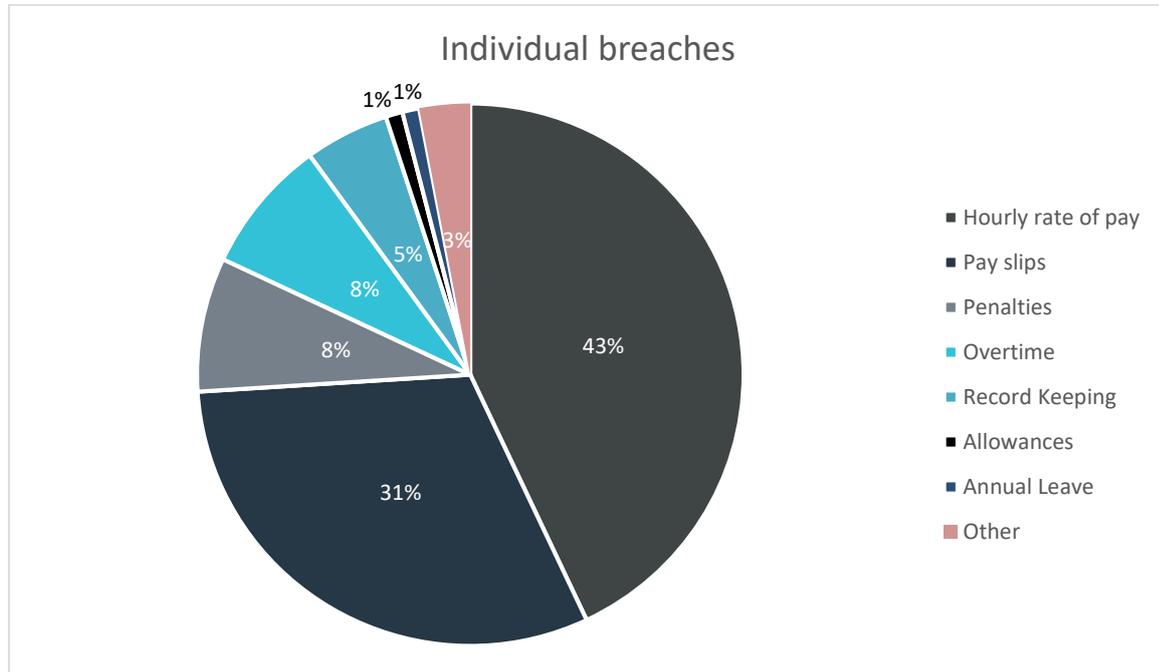
Of the 152 businesses not compliant with all the requirements of workplace laws:

- 79 (25%) had breaches relating to pay rates
- 45 (14%) had breaches relating to pay slips or record keeping
- 28 (9%) had both pay rate and records/pay slips breaches.

This means that of the 319 businesses:

- 107 (34%) of businesses were not paying their employees correctly
- 73 (23%) were not compliant with record keeping and payslip requirements
- \$202 227 was recovered from on behalf of 264 employees.

Individual breach types



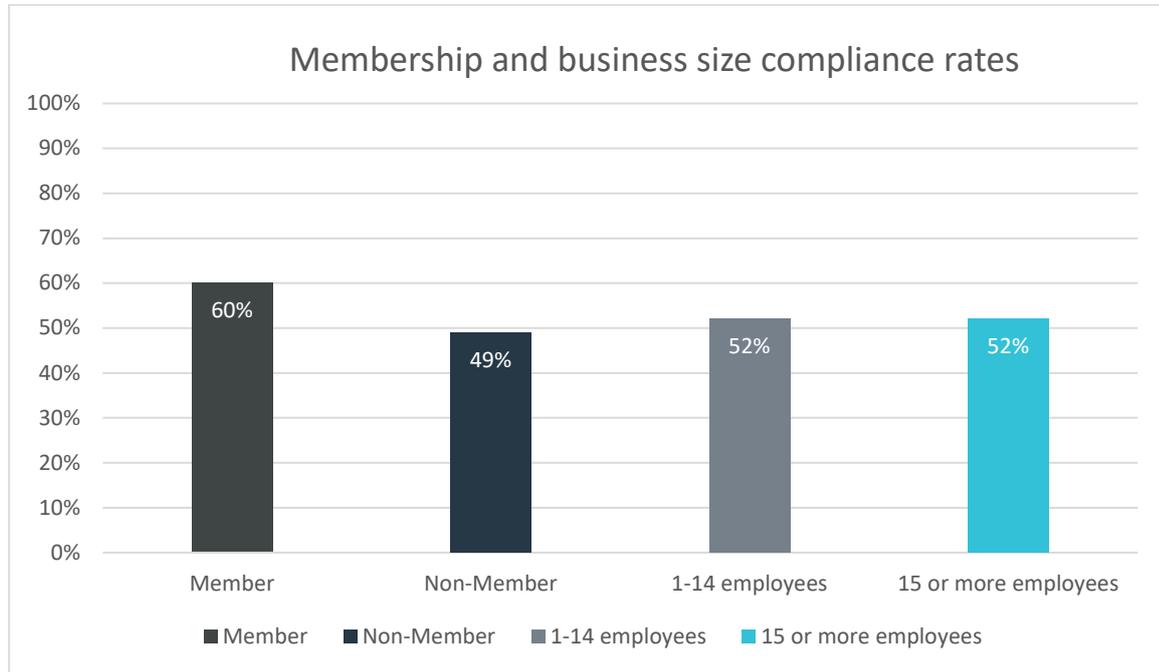
The 152 businesses that were non-compliant had a total of 208 individual breaches. The most common breaches related to underpayment of hourly rate (43%) and pay slips (31%).

The individual recoveries ranged from around \$2 to over \$22 000 in a single case. In most circumstances, the underpayments involved one to three employees per business.

Similar to issues identified in the mid-north coast region, the majority of the underpayments were in relation to employers failing to implement the minimum wage following the Annual Wage Review, or misinterpreting award conditions.

Pay slip breaches (31%) were the second most common identified breaches with the majority of errors related to pay slips not including the superannuation fund name, employer name or ABN.

Membership and business size



The campaign found that both small and large businesses in the mid-western area of the campaign had a compliance rate of 52%, which is different to FWO findings where large businesses are usually found to have higher compliance rates than small businesses. Members of an industry or employer association had a higher compliance rate (60%) than businesses that were not members (49%) which is consistent with other campaign results.

Compliance and enforcement outcomes

The campaigns across both regions resulted in numerous compliance and enforcement outcomes, including:

- one enforceable undertaking was executed, recovering \$22 724.60 for 24 employees
- 10 compliance notices were issued, recovering \$63 903 in back pay for 37 employees from 10 businesses
- 15 infringement notices were issued, totalling \$5940
- 19 formal cautions

Examples of the types of matters we utilised compliance and enforcement tools for are contained in the case studies below.

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 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.

Fair Work Inspectors audited a restaurant that engaged several young workers. Although the employer was found to have met their pay slip and record keeping obligations, the audit identified that three casual employees had been underpaid their ordinary rates of pay. The employer was unclear in their understanding of the award that applied, and had paid their staff only what they believed would apply without taking steps to confirm the correct entitlements.

The audits revealed that two of the three employees underpaid were junior food and beverage attendants. The employer was provided with the correct rates of pay that applied under the Restaurant Industry Award, and the three workers were back paid nearly \$3 000 in outstanding entitlements.

As the FWO considered the two affected junior staff to be vulnerable employees, the inspector issued a formal caution to make sure the employer understood the implications of any future breaches. The employer was also encouraged to register with FWO's My Account and use our Pay and Conditions Tool to help ensure that they had the tools and resources needed to comply with their workplace obligations in future.

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 Fair Work Act 2009. Fifteen infringement notices totalling \$6 480 were issued during the campaign.

A Fair Work Inspector audited a local retail business as part of the campaign and discovered that the employer did not issue payslips, was not keeping adequate records of the hours worked by employees, and had insufficient records of employment entitlements, such as leave accruals.

Although the employer maintained a payroll book, the information contained did not satisfy the record-keeping requirements of the Act. For instance, records did not contain required information such as the ABN, date of payment, the period to which the payment related to, loadings, allowance or bonuses, the hourly rate of pay, and the employee's superannuation fund name.

In addition to the record-keeping and pay slip breaches, the employer had also underpaid casual employees their hourly rates of pay.

The inspector issued two infringement notices. One for not meeting record-keeping requirements and failing to issue pay slips and the other for the underpayment of wages. In addition, the FWO recovered \$4000 for the employees of the business.

Case study – compliance notice

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 \$63 902.67 was recovered for 37 employees in response to compliance notices issued as part of this campaign.

Fair Work Inspectors audited a local retail business in the mid-western area and identified the casual employees had been underpaid. More specifically, the employer had failed to provide the minimum base rates of pay and penalty rates as contained in the *General Retail Industry Award 2010* (the award).

The inspector deemed it was appropriate to issue a compliance notice to the employer specifying the amounts owed to each employee and reinforcing the importance of compliance with the award terms. The employer rectified the underpayments in accordance with the compliance notice and back paid 11 employees a combined total of \$6 515.

Case study – enforceable undertaking

The FWO entered into one enforceable undertaking as a result of the campaign. An enforceable undertaking is a 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.

The FWO entered into an enforceable undertaking with [Soul Food Design Depot and Gallery Pty Ltd](#) after it found that the business had failed to meet its minimum wage obligations under the *Restaurant Industry Award 2010* (the award).

The underpayments had arisen due to the employer's failure to understand and interpret the clauses of the award, as well as missing the yearly 1 July wage review. The underpayment of hourly rates, weekend penalties and casual loadings resulted in the business back paying a total of \$22 742.60 to 24 current and former employees.

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

- Registering a FWO My account to receive information and updates relevant to the organisation
- Sending a letter of apology to effected employees
- Engaging an external body such as an accounting professional, to undertake periodic audits each year for three years and providing evidence of these audits to FWO
- Undertaking workplace relations training available on the FWO website.

Conclusion

Both the mid-north coast and mid-western areas audited in the campaign had similar results in terms of overall non-compliance (48%) with workplace laws and the types of breaches and reasons for breaches identified.

Underpayment of the hourly rate and pay slip breaches were the main breaches identified during the campaign in both areas. The most common reasons given by employers for non-compliance included a lack of awareness or a misunderstanding of their obligations under workplace laws, or misinterpretation of award conditions. This demonstrates the continued importance of the FWO's campaign activities as a way of directly interacting with businesses to check compliance, and educate and provide resources to employers about their workplace obligations.

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 on businesses that have been found to be non-compliant in previous campaign activities, particularly as they have been provided with the information and resources to get it right.

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 also contains online training modules that cover an array of topics, including a record-keeping and payslip module, which helps employers (particularly small business without HR support) learn how to make, update and manage employment records for their business. Businesses are also encouraged to visit FWO's [Small Business Showcase](#) which is a virtual hub containing a range of tools and resources to help small business owners meet their workplace obligations.

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 to [email updates](#).

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 undertakes 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. 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.