

ACT Restaurant Industry Audit Program

Final report – June 2013

A report by the Fair Work Ombudsman under the *Fair Work Act 2009*.
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Summary

The Fair Work Ombudsman (FWO) conducted the ACT Restaurant Industry Audit Program (the program) between November 2011 and March 2013. We ran the program in two phases.

The first phase of audits commenced in November 2011, with a subsequent phase beginning in August 2012.

We initiated the program after an analysis of FWO complaint data revealed that restaurants in the ACT made a significant contribution to complaints received. The majority of the complaints related to the underpayment of employees.

During the program, we selected 180 ACT restaurants for assessment. Of the 179 audits completed, we found 105 (59%) employers to be in contravention and 74 (41%) employers compliant.

We recovered \$279,756 for 482 employees.

Purpose of the campaign

The aim of the program was to promote and assess compliance with the *Fair Work Act 2009* (the Act), the *Fair Work Regulations* (the Regulations) and the *Restaurant Industry Award 2010* (the Award) in the ACT restaurant industry.

In particular, we wanted to:

- inform employers about their workplace obligations
- promote our self-help tools available at fairwork.gov.au among employers
- assess compliance with record-keeping and pay slip regulations
- assess compliance with correct rates of pay

Our industry partners

We contacted the following stakeholders to inform them of the program and seek their support in promoting the program amongst their members:

- Restaurant and Catering Australia
- United Voice
- Australian Hotels Association
- Accommodation Association of Australia

Why did we target this industry?

Analysis of the complaints received by FWO show that in the ACT, a high number of complaints are from restaurant employees.

In 2011/12, 13% of all ACT complaints received came from the restaurants and cafes sector.

When investigated, many of these complaints resulted in our inspectors identifying contraventions. The majority of contraventions related to the underpayment of entitlements. In 2011/12 \$28 762 was recovered on behalf of 16 employees.

What did we do?

We randomly selected a sample of ACT restaurants for audit.

We wrote to some of the selected businesses and requested time and wage records for a two week pay period for assessment. For the other businesses selected, we visited their premises to conduct assessments on site.

Fair Work Inspectors assessed if employers were complying with the following obligations:

- pay slips and record-keeping
- rates of pay and loadings
- overtime entitlements

Where we identified record-keeping and pay slip contraventions, we explained these to the employer and provided them with information about correct record-keeping practices. We also required them to agree in writing that they would maintain compliant records in the future.

In cases where we found underpayments, we spoke with the employer to discuss our findings and the action required to rectify the contraventions. We also sent the employer a letter, formally outlining our findings. We worked with the employer to assist them calculate underpayments and we confirmed that all underpayments had been paid to affected employees.

In conducting these assessments, we took the opportunity to answer questions and offer further information regarding employer obligations.

Importantly, we also advised employers of our online resources.

What did we find?

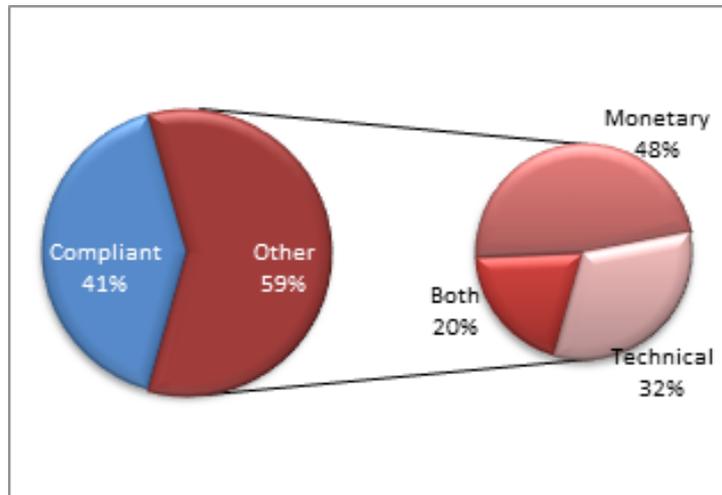
Of the 179 completed audits we found 74 (41%) businesses were compliant and 105 (59%) were in contravention. We recovered \$279,756 for 482 employees.

One audit remains ongoing.

Number of audits completed	179
Employers compliant	74 (41%)
Employers in contravention	105 (59%)
Total amount recovered	\$279,756
Number of employees paid	482

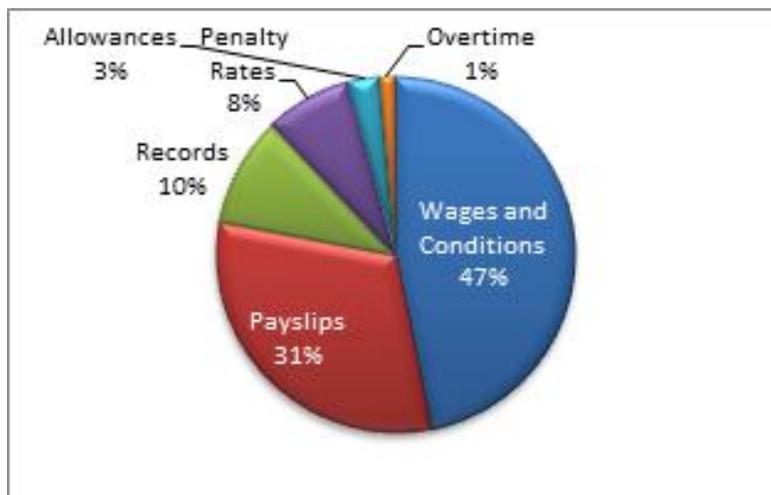
Of the 105 businesses in contravention, 50 (48%) had monetary contraventions, 34 (32%) had technical contraventions and 21 (20%) had both monetary and technical contraventions.

Chart 1: Contravention Chart



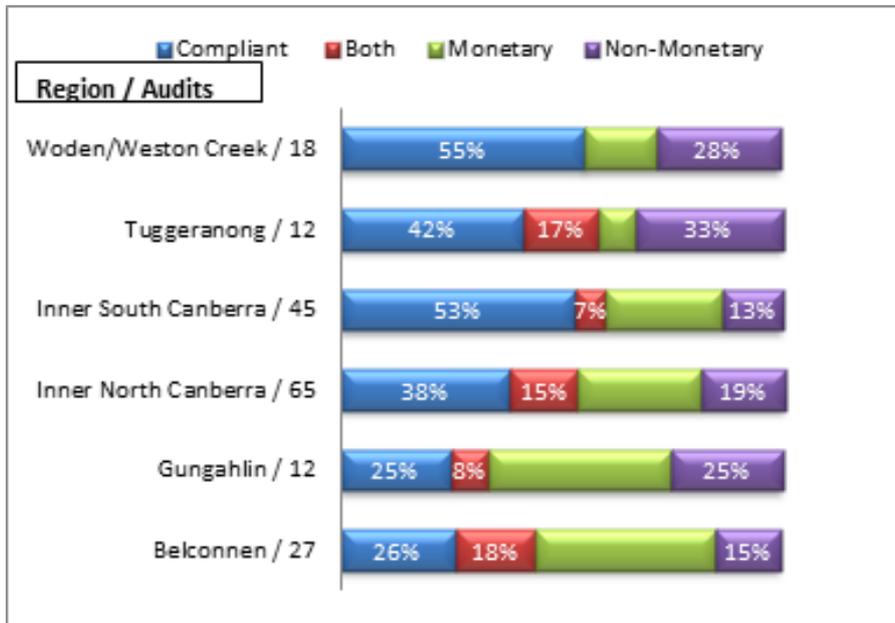
The 105 businesses found to be in contravention, had a total of 141 separate contraventions. A breakdown of these contraventions is illustrated below.

Chart 2: Types of contraventions



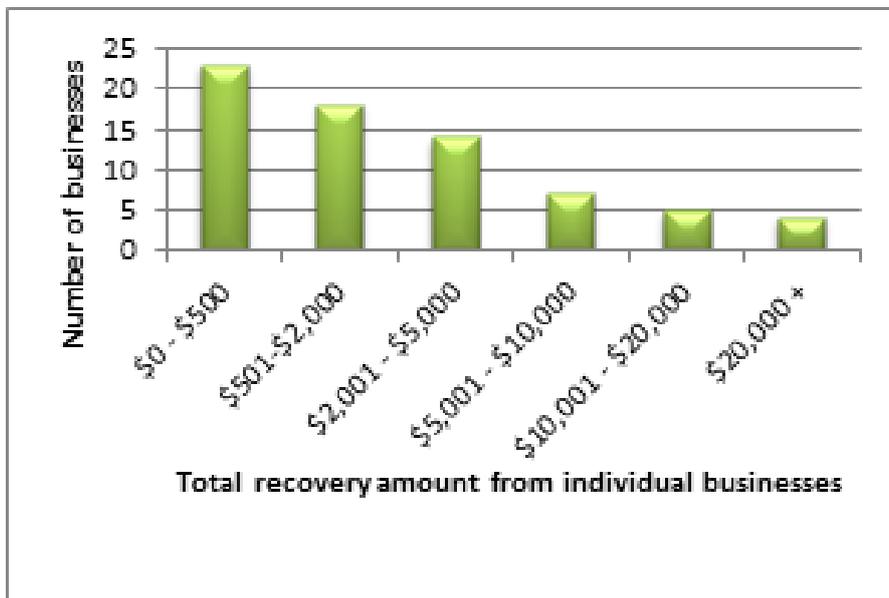
Compliance rates varied across the ACT regions we audited. The Woden/Weston Creek region recorded the highest compliance rate (55%), inner South Canberra recorded a 53% compliance rate and Tuggeranong recorded a compliance rate of 42%.

Chart 3: Audit findings by region



We recovered \$279 756 from 71 businesses for 482 employees. Monies recovered from individual businesses ranged from \$30 to over \$26,000.

Chart 4: Money recovered per business



Case Study: Casual paid part time rates

ABC Pty Ltd * was selected for assessment. Having assessed ABC Pty Ltd's records, we found several casual employees being paid part time rates that did not include any casual loading.

In discussing our findings with the employer, he also revealed that he did not keep all timesheets for his casual employees. We informed him that he was required to keep timesheets for his casual workers, especially where they worked hours that attracted a penalty rate. We also explained the correct classification of his employees and provided him with templates for correct record-keeping practices.

In relation to the underpayments of the casual employees, we worked with the employer to calculate the amount of back pay owing to the employees.

As a result, we recovered a total of over \$26,000 on behalf of six employees. Given the size of the underpayments, we implemented a payment plan for the business to follow, to ensure the employees received the full amounts owing to them.

*Not the actual name

Other findings

Some of the common findings reported by the Fair Work Inspectors who conducted the assessments included:

- employers paying enterprise agreement rates which were below the applicable award rate.
- casual employees were being paid part-time rates
- employees not receiving personal or annual leave
- employers paying 'going rates' or 'industry rates' which were below the award rate
- flat rates being paid for all hours worked which were insufficient to compensate employees for penalty rates that would have been received
- casual employees working less than the minimum casual engagement

Concluding remarks

The results of the program are of concern. We were disappointed to find both a high rate of contraventions and of underpayments, but we were pleased that all contraventions were voluntarily rectified.

The industry has shown a positive response to our activity and we are hopeful that this will result in greater compliance in the future.

We will soon commence the second wave of our National Hospitality Industry Campaign, in which we will be focussing on restaurants and catering businesses. ACT restaurants will be included as part of the national campaign. This will enable us to assess compliance levels in light of the program and to provide ongoing support to the industry.

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 vision is fair Australian workplaces, and our mission is to work with Australians to educate, promote fairness and ensure justice in the workplace.

Our education and compliance campaigns target specific industries to assist them achieve compliance with national workplace laws. Our focus is usually industries that need assistance with compliance and employ vulnerable workers.

We like to work with relevant industry associations and unions to deliver our campaigns. We rely upon their 'real world' knowledge and communication channels to design and deliver our education activities and products.

This report covers the background, method and findings of the ACT Restaurant Industry Audit Program. Media enquiries can be directed to the media team at media@fwo.gov.au. If you would like further information about the Fair Work Ombudsman's targeted campaigns please contact, Steve Ronson, Group Manager – Operations (A/g) at steven.ronson@fwo.gov.au

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