



Australian Government

Fair Work OMBUDSMAN

SA – South east tourism campaign 2012

Final Report

About the Fair Work Ombudsman

The Fair Work Ombudsman is an independent statutory agency, created by the *Fair Work Act 2009* (the Act) 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. We promote harmonious, productive and cooperative workplace relations and ensure compliance with Australia's workplace laws, by:

- offering people a single point of contact for them to receive accurate and timely advice and information about Australia's workplace relations system
- educating people working in Australia about their workplace rights and obligations
- investigating complaints or suspected contraventions of workplace laws, awards and agreements
- litigating to enforce workplace laws and to deter people from not complying with their workplace responsibilities.

Education and compliance campaigns that focus on specific industries and/or regions are a proactive strategy we use to achieve compliance with national workplace laws. They are also effective in recovering employee entitlements, particularly when the campaign targets high-risk areas and industries that employ vulnerable workers.

This report covers the background, methodology and results of the South Australian South East tourism campaign 2012.

For further information and media enquiries please contact Ryan Pedler (ryan.pedler@fwo.gov.au) in the Fair Work Ombudsman's Media Unit.

If you would like further information about the Fair Work Ombudsman's campaigns please contact, Steve Ronson, Executive Director – Dispute Resolution and Compliance (steven.ronson@fwo.gov.au).

Summary

During March 2012, the Fair Work Ombudsman (FWO) conducted the South east tourism campaign (the campaign). Fair Work Inspectors visited tourism businesses in the south east of South Australia, to promote and assess compliance with the *Fair Work Act 2009* (the Act), the *Fair Work Regulations 2009* (the Regulations) and other industrial instruments.

We assessed the records of 55 businesses in the region including the towns of Beachport, Robe and Millicent. We have finalised 53 assessments and found that 37 (70%) employers were compliant and 16 (30%) were in contravention. To date, we have recovered \$6,797 for 42 employees.

Background

Beachport, Robe, Millicent and surrounding towns are popular holiday destinations and each year experience a large influx of tourist traffic during the warmer months.

Traditionally, local businesses have dealt with this surge in custom by engaging extra short-term staff. Often these employees are what we consider to be vulnerable employees, for example, young people working on a casual basis in their school holidays.

In recent years, we have received a high number of complaints from employees in the region, employed in this industry. Many of these complaints have resulted in contraventions. We decided that a campaign targeting tourist-orientated businesses in the region would help to address such issues.

In addition, this campaign was a good opportunity to continue working with employers in the region, following on from the Limestone Coast record-keeping and pay slips campaign of 2009/10.

Campaign aim & objectives

The aim of the campaign was to assist tourism employers in the south east of South Australia to better understand and comply with the requirements of the Act, the Regulations and their awards including the *Fast Food Industry Award 2010*, the *Restaurant Industry Award 2010* and the *Hospitality Industry (General) Award 2010*.

The specific objectives of the campaign were to:

- assess compliance with correct wage rates
- assess compliance with correct time and wage record-keeping and pay slip practices
- encourage employers to voluntarily correct of any contraventions identified
- provide employers with information about the many resources provided by FWO, including our online tools

- engage with key industry stakeholders
- provide a public report on the findings of the campaign.

Stakeholder involvement

Before we commenced our audits, we contacted the following stakeholders:

- the Restaurant and Catering Association (RCA)
- the Accommodation Association of Australia (AAoA),
- the Australian Hotels Associations South Australia (AHA SA)
- Business SA
- United Voice SA
- the South Australian Tourism Commission (SATC).

We explained the purpose and the activities that would be involved in the campaign. We also sought their feedback and assistance in promoting the fair work message in order to maximise the impact of the campaign.

As a result, the FWO joined the AAoA in conducting a webinar for its members. The webinar provided information about the role of the FWO, the audit process and an overview of employer obligations.

Method

In March 2012, we compiled a list of randomly selected businesses that were within the scope of the campaign. We wrote to these employers advising them of their selection for assessment and of our intention to visit them. The letter also directed employers to our various educational resources, including our suite of online tools.

During the site visits, we reviewed the employers' employee records and assessed the following:

- pay slips and time records
- hourly rates, loadings and penalties
- overtime entitlements
- minimum hours of engagement.

When we found employers to be compliant with their obligations, we issued them a site visit report advising them of this finding.

When we found employers with record-keeping and pay slip contraventions, we provided them with information to help them understand correct record-keeping practices. We also required these employers to agree in writing that they would maintain compliant records and pay slips in the future.

Where we identified possible contraventions where employees appeared to be under paid, we requested further records from the employer and undertook a more comprehensive audit. Once completed, we contacted the employer by telephone

and advised them of our finding and what action they needed to take to correct any identified contraventions. We also confirmed this information by letter.

Results

During August 2012, when we compiled the results of the campaign, we found that 37 (70%) employers were compliant and 16 (30%) employers were in contravention of Australian workplace laws.

We have recovered \$6,797 in underpayments for a total of 42 employees. Two audits remain ongoing and are likely to result in significant monetary recoveries.

Table 1: Campaign results	
Number of employers Audited (completed)	53
<ul style="list-style-type: none">• <i>Employers compliant</i>	37 (70%)
<ul style="list-style-type: none">• <i>Employers in contravention (voluntary compliance)</i>	16 (30%)
Total amount recovered	\$6,797
Number of employees paid	42

Of the 16 employers found to be in contravention, 13 (81%) were identified as having contraventions related to time and wage records or pay slip requirements and two (13%) were identified as having monetary contraventions. One employer was identified as having both monetary and non-monetary contraventions.

The monetary contraventions identified appeared to result from the employers having incorrectly calculated the rates of pay. The majority of contraventions related to pay slips that were not compliant with the requirements of the Act and the Regulations.

Case study

Francine's cafe was selected for audit as part of the campaign. During the site visit we identified that a number of Francine's employees were underpaid the base rate of pay and weekend penalty rates.

We requested additional records to conduct a more comprehensive audit, which confirmed the contraventions. A Fair Work Inspector telephoned Francine and advised her of the findings. Francine replied that her employer association had provided her with the pay rates. The Fair Work Inspector explained the correct pay rates and the transitional provisions from the award.

We found the employer had underpaid seven of her employees a total of \$1,526. Six of the employees were juniors, casuals or trainees. Francine voluntarily back paid each of the employees.

We spoke with Francine about how she could remain up-to-date with her obligations. We directed her to our online tools and encouraged her to become familiar with these, to ensure she has correct information in future.

The majority of businesses we audited were in Robe (24) and Millicent (19). Robe had the highest number of employers in contravention (6).

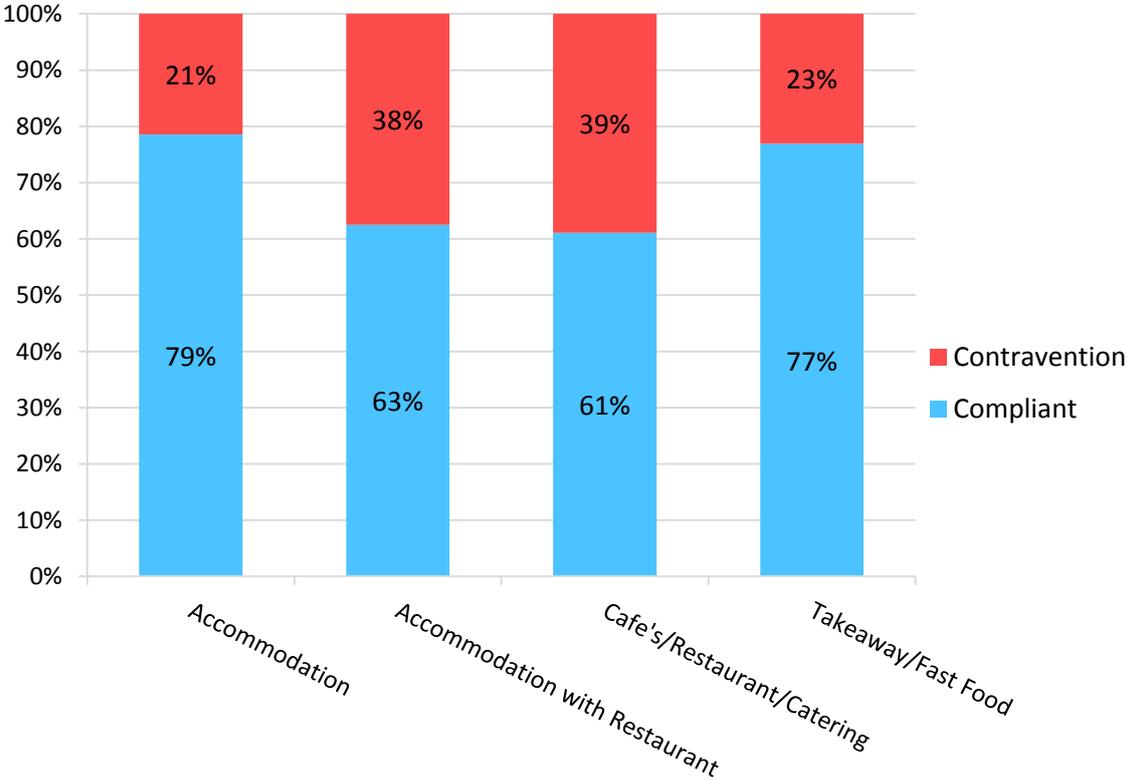
Beachport and Kingston SE recorded the highest contravention rate (67%).

Table 2: Results by town						
	Beachport	Kingston SE	Millicent	Robe	Southend	TOTAL
Audits completed	6	3	19	24	1	53
• Employers compliant	2 (33%)	1 (33%)	15 (79%)	18 (75%)	1 (100%)	37 (70%)
• Employers found to be in contravention	4 (67%)	2 (67%)	4 (21%)	6 (25%)	- (0%)	16 (30%)
Ongoing investigations	-	-	2	-	-	2

Employers in the Cafes, Restaurants and Catering industry sector recorded the highest rate of contravention (39%), followed by those in Accommodation with Restaurants sector (38%). The Accommodation sector, which includes providers such as motels and caravan parks, had the lowest contravention rate (21%).

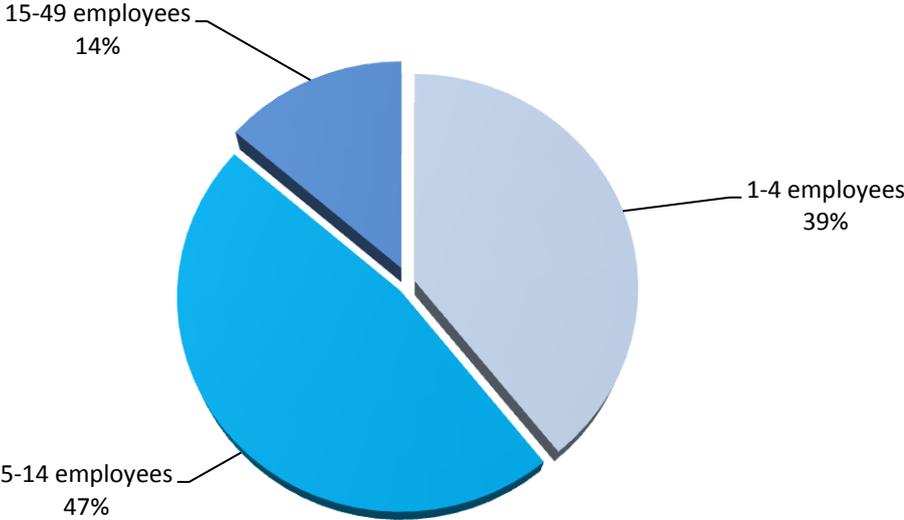
Table 3: Results by industry sector				
	Audits completed	Contravention rate	Monetary contravention rate	Ongoing investigations
Accommodation	14	21%	0%	-
Accommodation incl. Restaurant	8	38%	0%	-
Cafe's/Restaurant/Catering	18	39%	17%	-
Takeaway/Fast Food	13	23%	0%	2
Total	53	30%	6%	2

Chart 1: Compliance rates by industry sector



The businesses that we audited varied in size in terms of the number of staff they employed. 47% of business audited employed between five and 14 employees, while 39% employed between one and four employees.

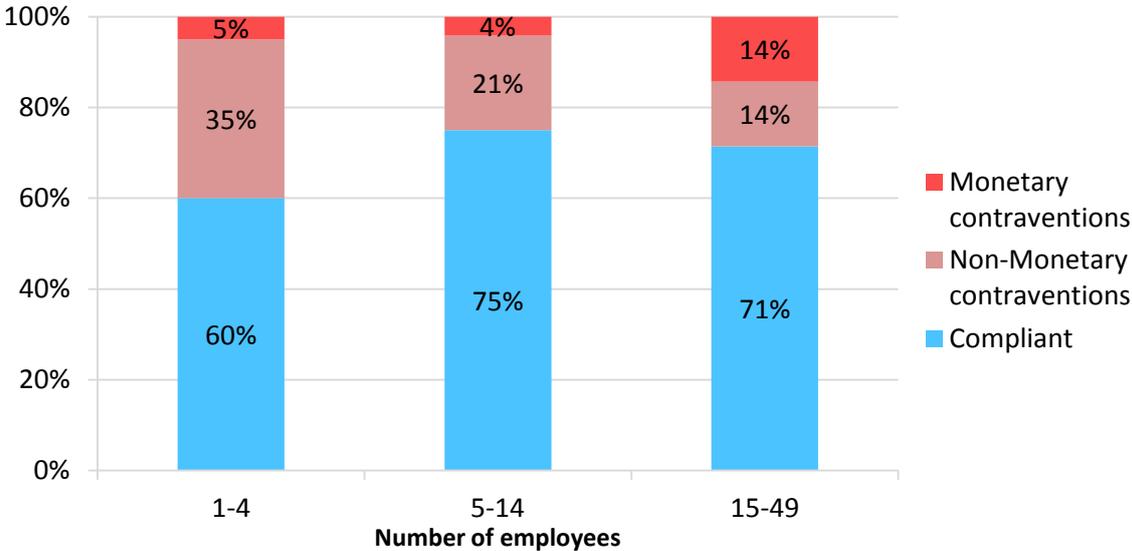
Chart 2: Proportion of businesses audited – by number of employees



Businesses employing between one and four employees recorded a 60% compliance rate. Five percent of the businesses audited in this group had monetary contraventions, while 35% had non-monetary contraventions.

For those businesses that employed between five and 14 employees, 75% were compliant, and 71% of businesses with between 15-49 employees were compliant. The businesses that employed between 15 and 49 staff had the greatest monetary contravention rate (14%).

Chart 3: Compliance rates by number of employees



Case Study

Steve’s Caravan Park was selected for audit in the campaign. During the site visit we found that Steve’s employees had not been issued with pay slips. We explained to Steve that under workplace laws he is required to issue employees with pay slips. To assist Steve, we provided him with fact sheets about employer records and pay slip obligations and we showed him the pay slip template on our web site.

Steve thanked the Fair Work Inspector for assisting him and stated that he would comply with his obligations in the future.

Conclusion

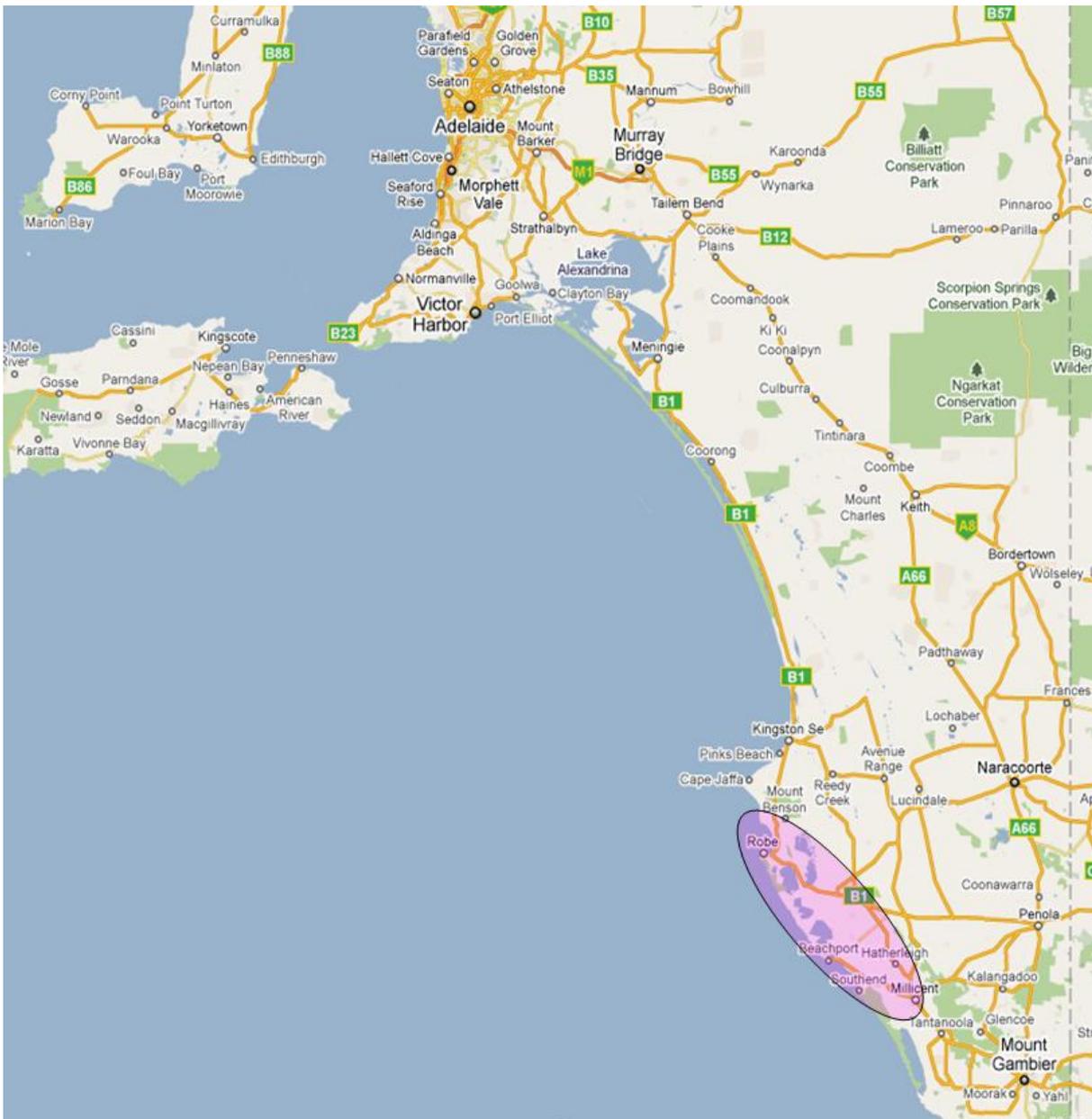
Overall, we were pleased to find a reasonable level of compliance amongst the tourist businesses audited in the south east of South Australia. The rate of contravention (30%) was an improvement on the 35% compliance rate recorded in the Limestone Coast record-keeping and pay slips campaign 2009/10.

Also, the majority of identified contraventions did not result in underpayments for employees but related to pay slip and record-keeping requirements.

These results were particularly encouraging considering that the tourist industry consists of industry sectors which often have high rates of contravention.

This campaign gave us the opportunity to provide employers with correct information about workplace practices. We are hopeful that increased compliance will continue into the future.

Towns and region visited



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