

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 Western Australia, South Australia & Northern Territory Cafe, restaurants & takeaway food audit program.

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

In March 2012, the Fair Work Ombudsman (FWO) commenced the WA, SA & NT Cafe, restaurants & takeaway food audit program (the program). Fair Work Inspectors visited cafes, restaurants and take away food outlets to promote and assess compliance with the *Fair Work Act 2009* (the Act), the *Fair Work Regulations 2009* (the Regulations) and other industrial instruments.

During the program, we assessed the records of 124 businesses across WA, SA and the NT. Of the 121 finalised audits we found 71 (59%) employers were compliant and 50 (41%) were in contravention. Three audits are yet to be finalised.

To date, we have recovered \$222,305 for 269 employees.

Background

In recent years, we have received a high number of complaints from employees in the cafes, restaurants and takeaway sector. In investigating these complaints, we have identified a significant number of contraventions concerning both underpayment of employees and record keeping issues. This trend is consistent in WA, SA and the NT.

Previous targeted activity we have conducted in this sector has also revealed a significant level of non compliance.

In addition, we have received intelligence from within the sector relating to unfair workplace practices.

Campaign aim & objectives

The aim of the program was to promote and assess compliance with the Act, the Regulations and relevant modern awards.

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
- provide employers with information about the many resources provided by FWO, including our online tools
- provide a public report on the findings of the campaign.

Method

In March 2012, we selected a random sample of businesses from regions in each state where cafes, restaurants and take away businesses are highly concentrated.

Fair Work Inspectors visited the selected businesses to inform employers about the program and advise them of their selection for an audit by the FWO. We also provided information to employers about their workplace obligations and the various online resources we have available to assist them.

During May 2012, we returned to these businesses to assess their time and wage records to assess compliance with the following requirements:

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

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

Where we identified apparent underpayments, we requested further records from the employer and undertook a more comprehensive audit when we returned to our FWO offices. Once completed, we phoned the employer to discuss our findings and the action required to correct the contraventions identified. We also confirmed this information by letter.

Whilst visiting employers to conduct the audits, we took the opportunity to spend time answering their questions about their obligations. Importantly, when appropriate we also demonstrated to employers the online resources on our website that can be used to ensure they are meeting their workplace obligations.

Results

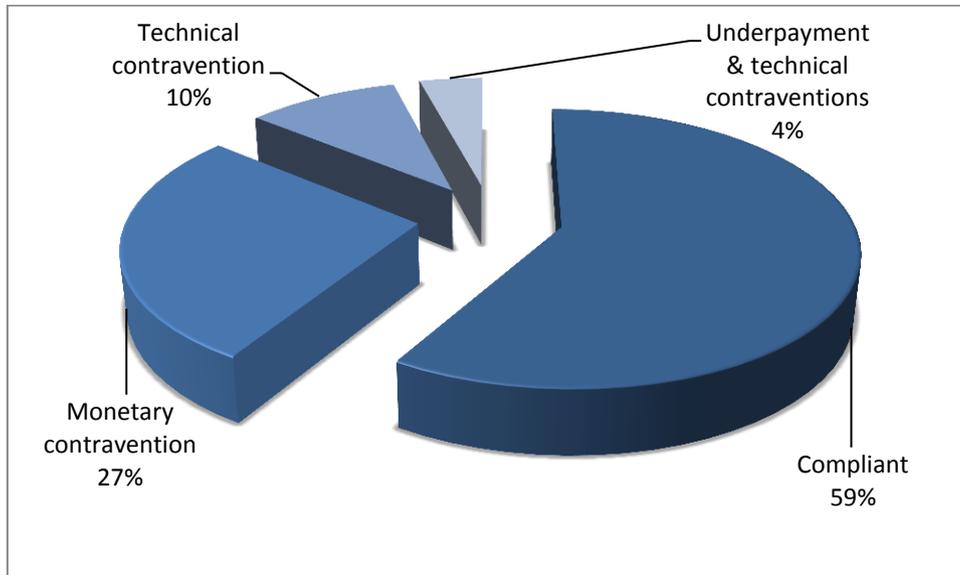
We compiled the results of the campaign in November 2012. We found that of the 121 audits completed, 71 (59%) businesses were compliant and 50 (41%) were in contravention of Australian workplace laws. Three audits are ongoing. We have recovered \$222,305 in underpayments for 269 employees.

Table 1: Audit Results	
Number of audits completed	121
• Employers compliant	71 (59%)
• Employers in contravention	50 (41%)
Total amount recovered	\$222,305
Number of employees paid	269

Contraventions identified

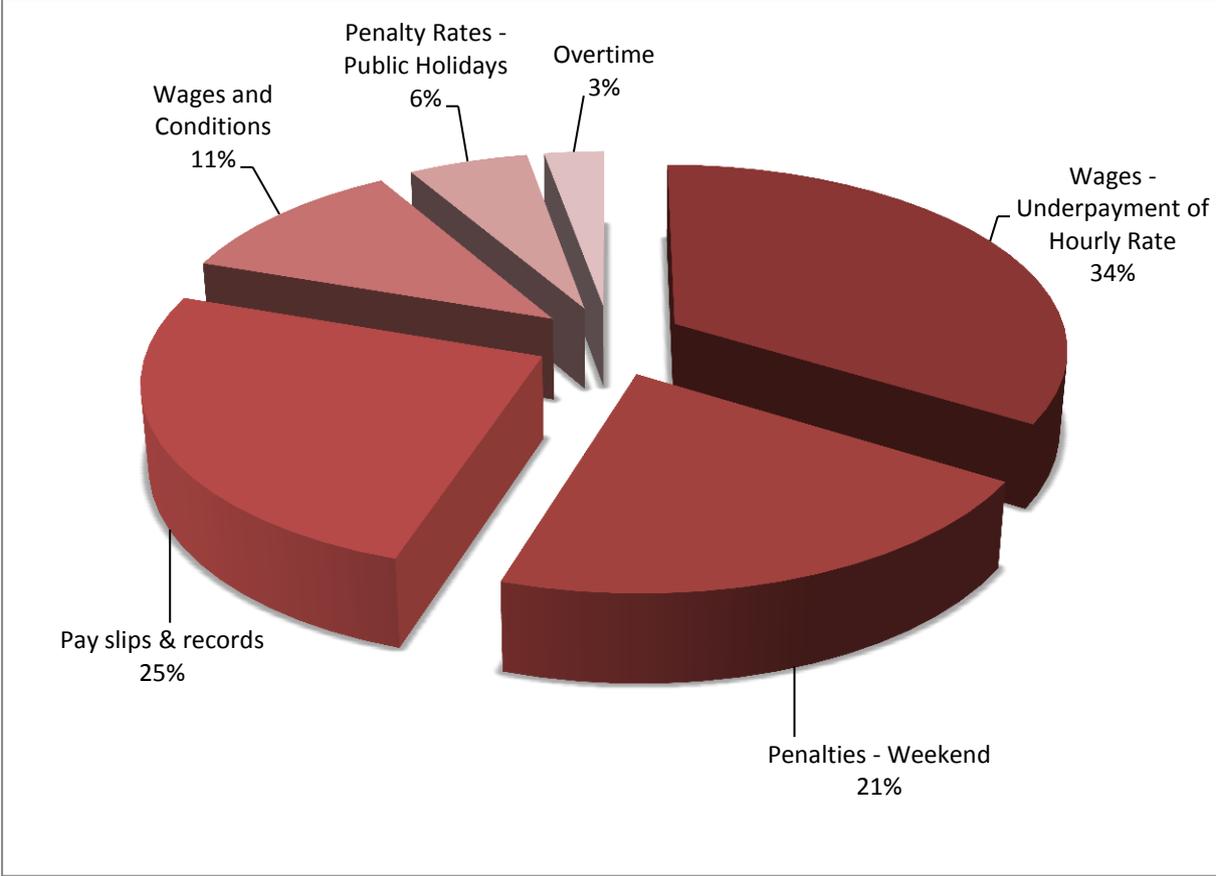
Of the 50 (41%) businesses found to be in contravention, 33 (66%) had monetary contraventions, 12 (24%) had technical contraventions relating to records and pay slips, and 5 (10%) had both monetary and technical contraventions.

Chart 1: Audit results



The 50 businesses found to be in contravention had a collective total of 71 contraventions. As outlined in Chart 2, 24 (34%) related to underpayment of hourly rates, 18 (25%) to technical contraventions regarding payslips and record-keeping, and 15 (21%) related to weekend penalty rates.

Chart 2: Individual contraventions identified



Other findings

Western Australia

In Western Australia, 56% of employers we audited were compliant. Of the 44% in contravention, 63% related to monetary contraventions.

The Fair Work Inspectors who conducted the assessments noted that most of the employers with contraventions seemed to be unfamiliar with the current rates of pay effective from 1 July 2012. Some employers had underpayments from the previous financial year and had also failed to increase rates from 1 July 2012.

The employees mostly affected by these underpayments were those employed on a casual basis, both juniors and adults.

In addition, several employers did not include the amount of superannuation paid or the fund name on the pay slips issued to their employees.

Three audits in WA are ongoing.

WA case study

An employer we visited explained that one of his employees was performing an unpaid role as a kitchen hand in his takeaway food shop. The employer had provided the employee with a contract of employment, which stated that the role would be unpaid for a probationary period of at least 3 months. The contract further explained that once the probationary period was completed, the employer would assess the employee's performance and may offer the employee a paid position.

When the Fair Work Inspector saw this contract of employment, it was evident this was a contravention of the Act. We informed the employer of this and he subsequently paid the employee the minimum entitlements owing for the period worked. The amount paid back to the employee was \$2584.

The Fair Work Inspector explained to the employer that generally all time worked by any employee must be paid at the appropriate award rates of pay, even if it is a probationary trial period.

**NB. For more information on unpaid work trials please read the fact sheet available on our website <http://www.fairwork.gov.au/resources/fact-sheets/employer-obligations/pages/internships-vocational-placements-and-unpaid-work.aspx#unpaid-trials>*

South Australia

In South Australia, 63% of employers audited were compliant. Of the 37% found to be in contravention, 59% had monetary contraventions.

There was a common theme reported by the Fair Work Inspectors who conducted the program in South Australia. Many of the employers found in contravention claimed to have determined their pay rates on advice from third parties, such as accountants or other employers. Unfortunately, these rates were often incorrect.

By failing to check their rates of pay with the Fair Work Ombudsman, several employers had to pay significant amounts of back pay to employees.

SA case study

One of the restaurants we visited in Adelaide employed a number of students on a casual basis. During the audit process we identified that all of the employees were being paid \$15.00 per hour for all hours worked.

We advised the employer that \$15.00 was below the federal minimum wage for casual employees and we explained the correct wage rates under the modern award. The employer informed us that his accountant had provided him with the rate of pay, and he therefore assumed that it was correct.

We recovered a total amount of \$57,000 from the employer for the nine employees who were under paid.

Northern Territory

In the Northern Territory 53% of employers we audited were compliant. Of the 47% in contravention, the majority (89%) related to monetary contraventions.

Employers responded favourably to our visits and many took the opportunity to talk with Fair Work Inspectors about their obligations.

The majority of employers we found in contravention were from non – English speaking backgrounds and had a limited understanding of their obligations. Once we advised them of the contraventions identified, they were very co-operative and eager to ensure that these were rectified.

The most common contravention we identified was the underpayment of the hourly base rate of pay.

**NB. We provide a range of information to help people from diverse backgrounds understand their rights and obligations under the national workplace relation system.*

For more information please visit our website

<http://www.fairwork.gov.au/languages/Pages/default.aspx>

Conclusion

The results of the program highlight the importance of our targeted activity and the need for ongoing education and compliance activity in this sector.

Although we were disappointed to find both a high rate of contraventions and of underpayments, we were pleased that all contraventions were voluntarily rectified.

As a result of the program, those employers we found in contravention now have correct information about their obligations. They are also now aware of our educational resources, including our online tools, which will assist them to remain compliant into the future.

FWO has recently commenced the national hospitality campaign. This campaign will enable us to continue education and compliance activity in the hospitality industry, including the cafe, restaurant and takeaway sector.

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