



FWO – ASIC Joint Audit Campaign

Outcomes from the Fair Work Ombudsman and Australian Securities and Investments Commission's Joint Audit Campaign – Brisbane 2016

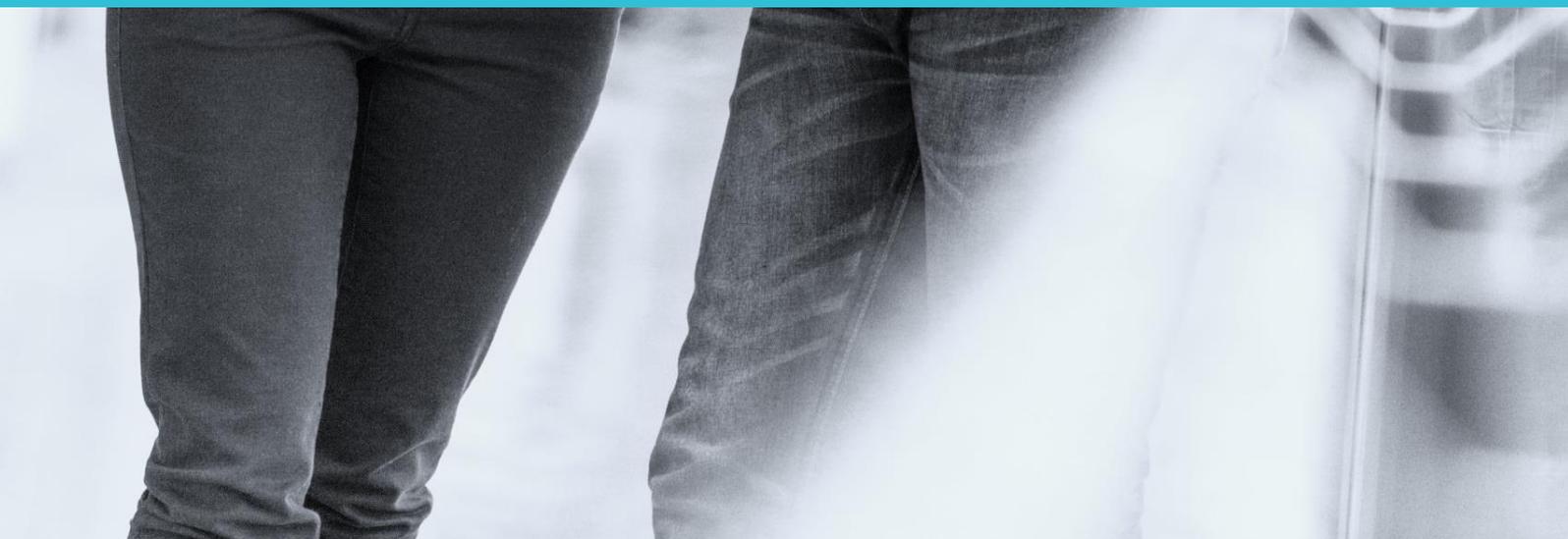


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Background

The role of the Fair Work Ombudsman (FWO) is to promote harmonious, productive and cooperative workplaces, through assisting employers and employees to understand their rights and obligations under Commonwealth workplace relations laws.

The Australian Securities and Investments Commission (ASIC) is Australia's corporate, markets and financial services regulator. ASIC regulates Australian companies, financial markets, financial services organisations and professionals who deal and advise in investments, superannuation, insurance, deposit taking and credit.

Through regular contact and scheduled meetings, the FWO and ASIC share information and refer matters to each agency where appropriate. However education and compliance activities with specific businesses are generally undertaken by each agency independently of the other. This means that where a business falls under both jurisdictions, they would engage with the two agencies on separate occasions.

The FWO and ASIC are committed to making compliance easier for small businesses by ensuring our approaches are fair and necessary, and our processes and procedures are appropriate, proportionate and free from unnecessary red tape. A way of achieving this is to work together in administering regulation and providing information and support.

By the FWO and ASIC working together and conducting a joint audit campaign, it eliminates separate audits that those businesses may have participated in with both agencies separately and reduces the impost on business operations.



What we did

The focus of this campaign was twofold. For FWO, it was to assess compliance with, and provide education in relation to employer obligations in respect of record-keeping and wages. This included identifying instances where employees had been under-paid and taking appropriate action to have those underpayments rectified.



The focus of the campaign for ASIC was to view the financial statements of businesses, and to provide education to company director's on their obligations as small business operators and company office holders.

The campaign included businesses that employed staff and had no compliance history with the FWO or ASIC. Where possible, it included businesses that had first time company directors, and all businesses were located in the Brisbane Metropolitan area.

A list of businesses in scope of the campaign was developed, and a number of these businesses were randomly selected. The selected businesses were contacted directly by phone to:

- Explain the campaign;
- Advise of the businesses inclusion; and
- Organise a suitable time to visit the business, ensuring where possible, that the necessary records, paperwork and company office holders would be available.

On the 30th and 31st May 2016, the FWO and ASIC visited 46 businesses in metropolitan Brisbane including the Brisbane CBD, Fortitude Valley, South Brisbane and West End. The visits were conducted by Fair Work Inspectors (FWI's) from the FWO Campaigns Team, and Analysts from the ASIC Small Business Compliance & Deterrence team.

FWI's and Analysts spoke to employers together. They informed employers about their workplace obligations and provided them with information and resources to help them meet their obligations, and spoke to office holders about their compliance obligations as directors of incorporated entities.

As well as providing education about their rights and obligations as employers and company office holders, both FWO and ASIC audited compliance with specific obligations.

FWI's audited businesses against the requirements of the Fair Work Act 2009 (the FW Act), the Fair Work Regulations 2009 (the FW Regulations) and the applicable award/agreement, specifically:

- Record-keeping/Pay slips;
- Ordinary rates of pay;



- Penalty rates/Overtime;
- Allowances/Loadings; and
- Meal breaks.

Where errors were identified, businesses were required to rectify the issue and provide proof of having done so (including back-paying underpaid employees where appropriate).

ASIC Analysts checked financial records that relate to Chapter 2M.2 of the Corporations Act 2001 (the Corporations Act). The obligations of company directors were checked to ensure awareness of their obligations relating to:

- Having a registered office/principal place of business;
- Keeping financial books and records;
- Ensuring the company is solvent and can pay its debts on time;
- Acting in the company's best interests; and
- Illegal phoenix activity.

FWI's provided businesses with information and resources to help them comply with their obligations under Commonwealth workplace laws. ASIC Analysts provided businesses with information on their tools and resources available, which are catered to small businesses and company office holders.

In particular, businesses were provided with the online resources freely available on www.fairwork.gov.au and www.asic.gov.au.

- [FWO MyAccount](#)
- [FWO Pay rates calculator](#)
- [FWO Pay slips and record-keeping information](#)
- [FWO Online training courses](#)
- [ASIC Small Business Hub](#)
- [ASIC Small Business Booklet](#)
- [ASIC Small Business Legal Requirements](#)





Outcomes

In relation to obligations under the FW Act and FW Regulations, FWI's conducted 46 audits in total.

Of the 46 completed audits:

- 32 (70%) businesses were compliant with all FW Act requirements;
- 14 (30%) businesses had at least one error, of which:
 - 6 (13%) had errors relating to pay rates;
 - 5 (11%) had errors relating to pay slips or record-keeping; and
 - 3 (6%) had both pay rate and pay slip/record-keeping errors.
- \$39,526 was recovered for 30 employees; and
- 2 formal cautions, 4 Infringement Notices (on the spot fines) and 1 Compliance Notice were issued.

Further information on compliance with the FW Act and FW Regulations can be found in **Appendix**.

In relation to obligations under the Corporations Act, ASIC Analysts attended the business premises of the same 46 businesses and found:

- 16 newly appointed company directors were available at the time of the visit. Discussions were held with those office holders on their obligations as company office holders;
- All businesses kept financial records;
- All business had financial records prepared by an accountant or used specific accounting software; and
- No significant issues or deficiencies in financial records.



Case Study

The FWO and ASIC audited a Thai Restaurant in the Brisbane CBD as part of the campaign. The FWI viewed employee records including payslips and time records and identified that the business was paying incorrect rates for weekend work. Pay slips issued by the business also did not fully meet the requirements under the FW Regulations.

During the visit, the Director of the business explained that he had worked as an employee in the industry for many years and when he opened his own restaurant, simply continued the practices he had known as an employee. Upon investigation the FWI determined that the business fell under the Restaurant Industry Modern Award, and whilst the Director was aware of the existence of the award, did not have a full understanding of the classifications within the award. He also did not fully understand his obligations as an employer in relation to record-keeping and pay slip obligations. The FWI provided education while onsite in relation to award coverage, and discussed the free resources available online. This included registering for My Account and the use of templates to show the owner the correct information that should be included on payslips.

While onsite the ASIC Analyst discussed with the Director his responsibility to keep company documents and viewed the financial records of the company. The Analyst reviewed the profit and loss statements kept by the business and found they were prepared by an accountant and there were no issued in relation to those documents.

FWI's the business to calculate correct rates of pay. In total the audit identified that 9 employees were underpaid \$4,170. The director readily engaged with the audit, back paid employees immediately and rectified the pay slips that were issued to include the superannuation fund information. The FWO issued a formal caution to the business.

This case highlights the importance on business owners to become aware of their obligations when commencing trading, rather than relying on industry norms or previous experience. Relying on incorrect information can result in underpayments to employees and enforcement action from regulators.



Enforcement Outcomes

Formal cautions were issued on 2 businesses. Formal cautions are written warnings that the FWO has found non-compliance and wants 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 will be a factor taken into account in deciding whether to



commence civil proceedings against the business and may be used as evidence in any penalty determinations.

Four Infringement Notices were also issued. An Infringement Notice is a fine given to a business for non-compliance with record-keeping or pay slip requirements as set out by the Act and Regulations.

One Compliance Notice was also issued. A Compliance Notice is a written notice legally requiring a business to rectify contraventions of the Act.



What did businesses think?

Feedback received from businesses audited during the campaign was positive.

Businesses included in the campaign stated:

- 'Being a young company, it helps to get everything correct from the beginning. Very satisfied with this visit' – Paddington business;
- 'Overall, it was a pleasant experience' – Brisbane CBD business;
- 'Good to see ASIC doing more prevention' – West End business;
- 'Highly informative content' – Brisbane CBD business; and
- That the visit by both FWO and ASIC together was: 'Simplified' – Anonymous business.

The feedback suggests that the businesses found the joint campaign simple, helpful and informative. The feedback received suggested that further joint collaboration would be welcomed and suggests that FWO and ASIC further working together would be useful for most small businesses.



Conclusion

The campaign was successful in achieving the objectives and focus that the FWO and ASIC set out to achieve. The FWO was able to assess the compliance of businesses with their obligations under the FW Act and the FW Regulations. Issues were identified by FWI's all of which have been rectified, including the back-payment of employees in cases where underpayments were identified. All businesses found to be non-compliant in the campaign will be re-audited as part of the FWO's National Compliance Monitoring



Campaign.

ASIC Analysts were able to engage with company office holders to provide information and education to them on their obligations. Analysts were also able to review the companies' financial records.

The campaign was successful in providing joined up government services to businesses involved in the campaign. The FWO and ASIC will use the results of this joint campaign to assess the value and utilisation of future collaboration. This may involve the development of future joint campaigns between FWO and ASIC and other Government agencies.

Given the positive feedback received from the businesses audited by FWO and ASIC, both agencies will continue to look for opportunities to conduct joint similar activities to assist businesses with compliance and education.

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 (FWO) 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 FWO/ASIC Joint Audit Campaign - Brisbane. 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 Lynda McAlary-Smith, Executive Director - Proactive Compliance and Education at Lynda.McAlary-Smith@fwo.gov.au.



About the Australian Securities and Investments Commission

ASIC is Australia's corporate, markets and financial services regulator. We contribute to Australia's economic reputation and wellbeing by ensuring that Australia's financial markets are fair and transparent, supported by confident and informed investors and consumers.

We are an independent Commonwealth Government body. We are set up under and administer the Australian Securities and Investments Commission Act 2001 (ASIC Act), and we carry out most of our work under the Corporations Act 2001 (Corporations Act).

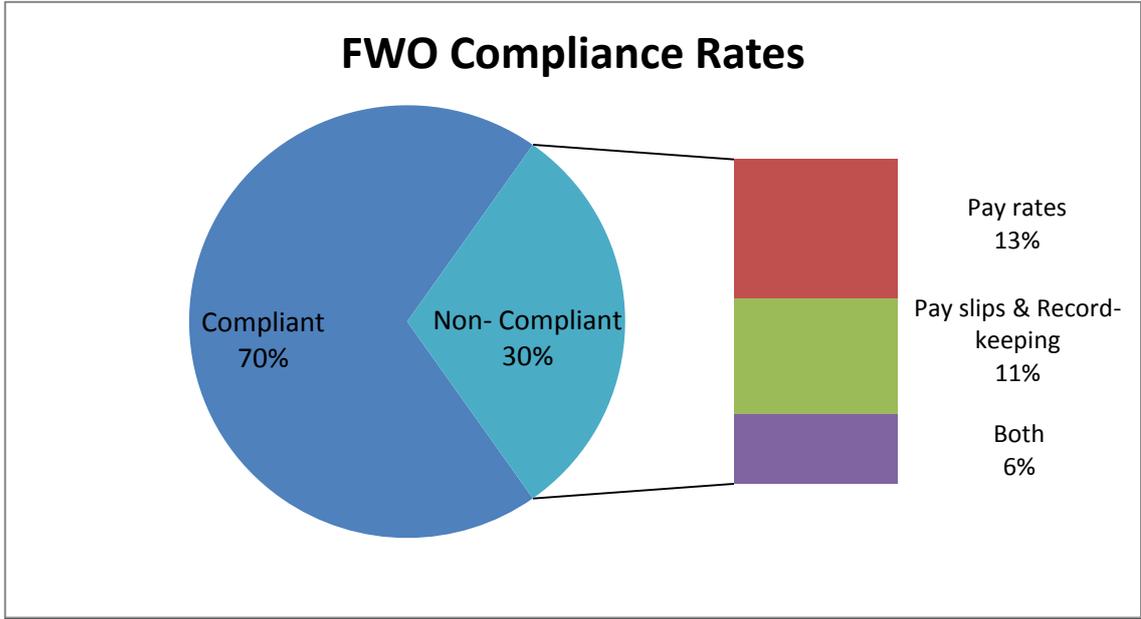
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If you would like further information about ASIC please contact Joe Zubcic, Senior Manager - Small Business Deterrence and Compliance at joe.zubcic@asic.gov.au

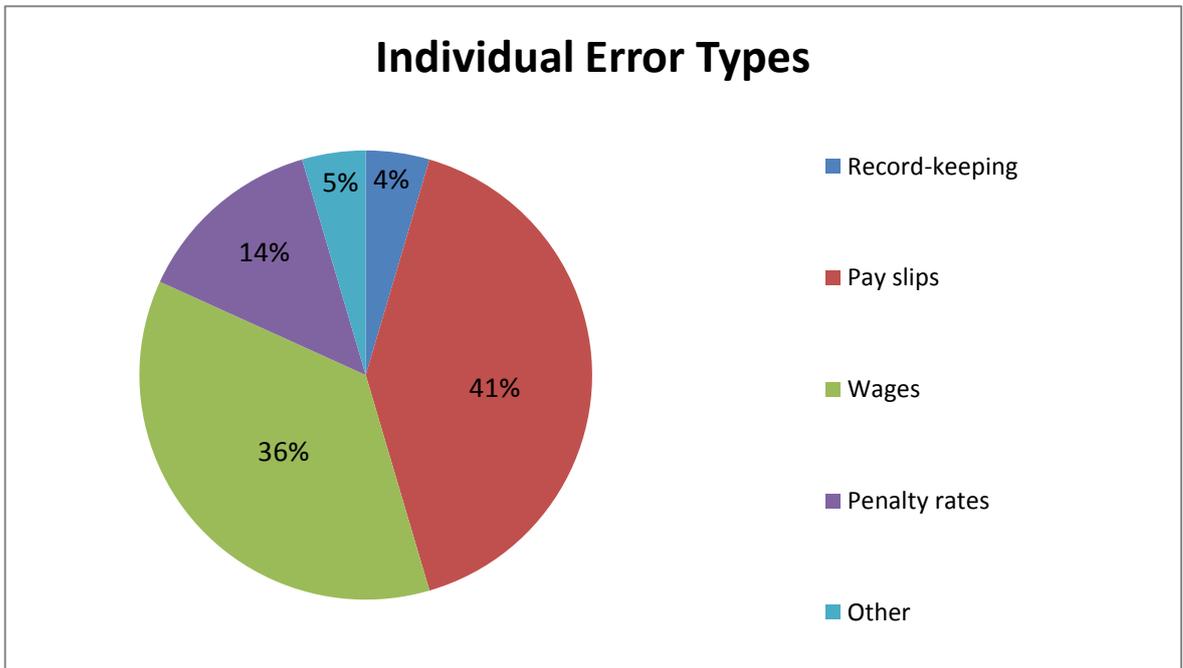


Appendix – FWO compliance data

FWO Compliance Rates



FWO Individual Error Types



FWO Compliance rates by Association Membership and Business Size

