



Fair Work  
OMBUDSMAN

# NSW/ACT specialised food retailing campaign

Final report – November 2013

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## Performance snapshot

Total of

269

businesses audited

Found

42%

employers non-compliant

More than

\$180k

recovered on behalf of  
employees

Total of

247

employees back paid

## Summary

The Fair Work Ombudsman (FWO) has conducted a NSW/ACT specialised food retailing campaign (the campaign).

The campaign was initiated following the receipt of 127 NSW based complaints involving the specialised food retailing industry in 2011/1012. Disturbingly, in 67% of those cases we found that employees had been underpaid.

During the campaign we selected 269 specialised food retailers for assessment. We found 114 (42%) employers in contravention and 155 (58%) employers compliant.

We recovered \$180 441 for 247 employees.

## Purpose of the audit program

The aim of the campaign was to promote and assess compliance with the *Fair Work Act 2009* (the Act), the *Fair Work Regulations* (the Regulations), the *General Retail Industry Award 2010* and the *Meat Industry Award 2010* in the specialised food retailing industry (the industry) in New South Wales (NSW) and Australian Capital Territory (ACT).

Specialised food retailing comprises the following sectors:

- meat retailing
- fresh fish retailing
- fresh poultry retailing
- fruit and vegetable retailing
- liquor retailing
- other specialised food retailing

In particular, we wanted to:

- inform employers about their workplace obligations
- promote our self-help tools available at [fairwork.gov.au](http://fairwork.gov.au) among employers
- assess compliance with record-keeping and pay-slip obligations, and
- assess compliance with correct rates of pay.

## Our industry partners

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

- Australian Retailers Association
- National Retailers Association
- National Independent Retailers Association
- The Retailers Association
- Shop, Distributive and Allied Employees Association
- NSW Business Chamber

## Why did we target this industry

This campaign was conducted based on an analysis of FWO complaint data for the 2010/11 financial year. The analysis revealed that we received 127 complaints from the industry in NSW, and in 67% of cases, we found that employees had been underpaid.

## What did we do?

We randomly selected a sample of specialised food retailers in NSW and the ACT for audit.

We wrote to the selected businesses and requested time and wage records for a two week period for assessment.

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

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

Where we identified record-keeping and pay slip contraventions, we explained our findings 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 discussed our findings with the employer and the action required to rectify their contraventions. We also confirmed our findings in writing.

Where necessary we assisted the employer to calculate underpayments. Finally we confirmed that all underpayments had been paid to the relevant employees.

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

Importantly, we also advised employers of our online resources.

## What did we find?

We analysed the results of the campaign in October 2013. Of the 269 audits completed:

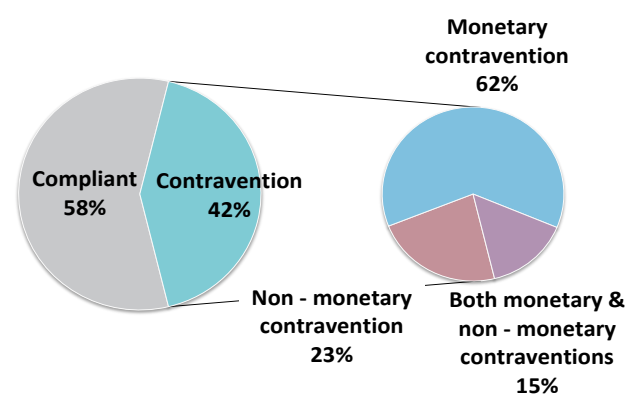
- 155 (58%) of businesses were compliant
- 114 (42%) of businesses were in contravention

We have recovered \$180 441 for 247 employees.

As shown in Chart 1, of the 114 businesses we found in contravention:

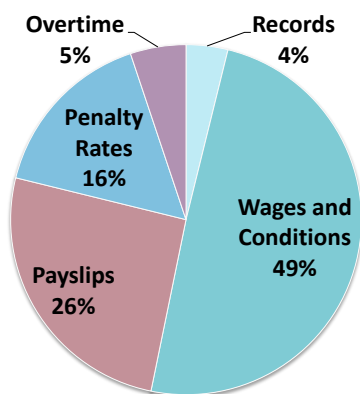
- 71 (62%) had monetary contraventions (for example had underpaid staff)
- 26 (23%) had non-monetary contraventions (for example record-keeping and payslip contraventions)
- 17 (15%) had both monetary and non-monetary contraventions.

**Chart 1 - Audit results**



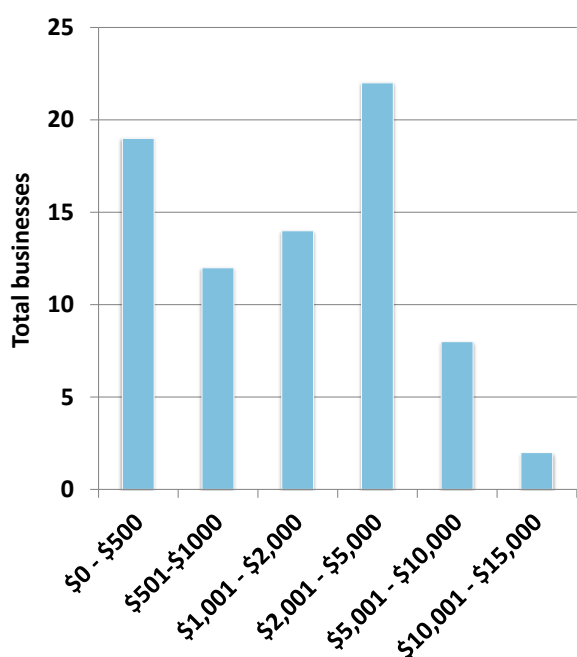
The 114 businesses we found in contravention had a total of 156 separate contraventions. Chart 2 shows the types of contraventions, with wages and conditions accounting for 49%.

**Chart 2 - Types of contraventions**



We recovered a total of \$180 441 from 77 businesses on behalf of 247 employees. The amount recovered from individual businesses ranged from just under \$16 to over \$13 000, as shown in Chart 3.

**Chart 3 - Amounts recovered**



Total recovered from individual businesses

Chart 4 shows the compliance rate by separate regions. In NSW, the New England region had the best compliance rate (75%) and Illawarra region the poorest compliance rate (40%).

In ACT, inner north and south Canberra had a 100% compliance rate and Tuggeranong, Belconnen and Woden/Weston Creek regions had a 67% compliance rate.

## Other findings

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

- 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 should have been received
- employers not keeping up to date with current rates and paying incorrect or out-of-date rates

**Chart 4 – Results by region**

State/ Region (total audits)	Compliant	Both	Monetary	Non-Monetary
<b>NSW (264)</b>	<b>57%</b>	<b>6%</b>	<b>27%</b>	<b>10%</b>
New England (4)	75%	0%	25%	0%
Hunter (16)	68%	6%	13%	13%
Mid-Western (3)	67%	0%	0%	33%
Greater Murray (5)	60%	0%	40%	0%
Northern Sydney (64)	61%	6%	23%	10%
Central Coast (22)	59%	0%	27%	14%
Sydney CBD (19)	58%	16%	21%	5%
Northern Rivers (7)	57%	0%	14%	29%
South Western Sydney (28)	57%	7%	25%	11%
Western Sydney (31)	56%	6%	32%	6%
South Eastern Sydney (39)	51%	10%	26%	13%
Mid North Coast (6)	50%	0%	50%	0%
Southern (8)	50%	0%	50%	0%
Wentworth (2)	50%	0%	50%	0%
Illawarra (10)	40%	10%	40%	10%
<b>ACT (5)</b>	<b>80%</b>	<b>0%</b>	<b>20%</b>	<b>0%</b>
Inner North and South Canberra (2)	100%	0%	0%	0%
Tuggeranong, Belconnen and Woden/Weston Creek (3)	67%	0%	33%	0%

**Case study – flat rates**

Mary\* was the owner manager of a business we selected for an assessment. When we assessed Mary’s records, we found she was paying a casual employee a flat rate of pay of \$20 per hour. This was for all hours worked including a regular Sunday shift and public holidays.

The rate of pay for a casual at the employee’s level was \$21.87 and Sundays and public holidays attracted penalty rates.

Mary also employed two casual junior employees each Saturday. She was paying both of these employees flat rates below the rate required for their age.

We met with Mary to discuss our findings. She advised that she was not aware of the correct rates for casual employees or that she needed to pay penalty rates for weekends and public holidays. She was also unaware of the junior casual rates for Saturday work.

We showed Mary how to use the FWO resources to calculate rates of pay for all of her staff. We also assisted her to calculate the amounts of back-pay owing to her employees.

As a result Mary paid back a total of \$3,766 to three of her employees.

\*Not her actual name



## Concluding remarks

The results of the campaign reveal there are issues of concern in the industry. We were disappointed to find both a high rate of contraventions and underpayments.

However we were pleased the industry has shown a positive response to our activity. Employers were open to our guidance and when our findings were brought to their attention they voluntarily rectified all contraventions. We are hopeful therefore that our intervention will result in greater compliance in the industry in the future.

We will continue to monitor the industry and if the number of complaints continues to be high, further education and compliance activities will be considered in the future.

## 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 NSW/ACT specialised food retailing campaign 2012 – 2013.

For further information and media enquiries please contact [media@fwo.gov.au](mailto:media@fwo.gov.au).

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

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