



Australian Government

# Fair Work OMBUDSMAN

## SA – Fast Food Campaign 2010 Final Report

### Summary

The Fair Work Ombudsman (FWO) undertook the South Australian Fast Food Campaign (the campaign) from January 2010 to September 2010. Fair Work Inspectors randomly selected and visited various fast food outlets throughout the state to assess compliance with hourly rates of pay, record keeping and pay slip obligations.

The fast food industry was specifically targeted for audit as a result of the number of vulnerable workers employed within the industry and the high number of complaints lodged with FWO by employees in the industry.

In addition to assessing compliance, the campaign provided an ideal opportunity to educate employers on their new obligations under the National Employment Standard (NES).

In total 87 audits were completed with 27 (31%) employers found to be in contravention. Of these employers, 16 were identified as having minor contraventions relating to pay slip and record keeping obligations and 11 employers were found to have monetary contraventions. All employers voluntarily rectified their contraventions and a total of \$13,376 was recovered for 53 employers.

Further information regarding the campaign is detailed below.

### Background

The campaign was implemented for a number of reasons. Firstly, the fast food industry (the industry) employs a number of employees the FWO categorises as 'vulnerable', such as youths, student visa holders and individuals from a non-English speaking background. Secondly, based on FWO intelligence, the industry ranks high in comparison to other industries in terms of the number of complaints lodged with FWO by employees.

The timing of the campaign also provided the ideal opportunity to educate employers on various aspects of the recently introduced Fair Work legislation, specifically the NES introduced in January 2010.

### Campaign aim & objectives

The aim of the campaign was to assess and improve compliance with the *Fair Work Act 2009 (the Act)* and applicable industrial instruments in the fast food industry in South Australia. The specific objectives were to:

1. audit the level of compliance with a targeted number of employers, specifically, ordinary rates of pay and pay slip obligations
2. provide the industry with information to assist employers to meet their obligations under federal legislation
3. educate employers on the National Employment Standards;
4. ensure vulnerable employees were receiving their correct entitlements and
5. and to promote the role of the FWO;

## **Stakeholder involvement**

In December 2009, prior to commencing the campaign, we contacted the National Retailers Association, Shop Distributive Allied Employees Association and Business SA. We also contacted master franchisors of popular fast food franchises to notify them of our intention to audit the industry as well as work with them to ensure that their franchisees were aware of and complied with their workplace rights and obligations.

Working with franchise head offices and master franchise holders proved extremely beneficial. In most cases the head offices and/or master franchisors notified all of their South Australian franchisees of the campaign, requested educational material from FWO to be sent to their franchisees and assisted franchisees prepare audit documentation prior to the field audit.

In some instances the head offices and/or master franchisor also provided their franchisees information on workplace law obligations through franchise newsletters and seminars.

## **Methodology**

We developed the list of fast food entities for audit from the Australian Business Registrar and White Pages. We then grouped these entities according to geographical location and assigned a date for the field audit to each of the regions.

Each of the targeted employers received a letter notifying them of the audit and detailing what records that they would need to make available and the date that the audit would take place.

We conducted field visits between January 2010 and September 2010. In addition to conducting the audit, we discussed NES obligations and provided the employer with an information pack containing NES fact sheets. A site visit report was completed for each visit.

Where an employer had not prepared the necessary audit documentation, they were requested to send the documents to the office for assessment.

Employers found to be compliant were notified of this audit finding by letter. Employers found to have pay slip contraventions were asked to sign a form committing them to rectifying the contravention(s).

In instances where monetary contraventions were detected, the employer's documents were taken back to the FWO office so that further investigation could be undertaken. The employer was notified of the findings of this investigation by letter.

## **Results**

### **Statistical findings**

The results of this campaign (compiled on the 4 February 2011) showed that we initially targeted 98 employers for audit. However as 11 employers were found to be unsuitable for audit, we completed 87 audits.

Of the 87 completed audits we found:

- 60 (69%) employers were compliant
- 27 (31%) employers to be in contravention

All employers voluntarily rectified their contraventions and as a result we were able to recover \$13,376 on behalf of 53 employees

<b>Status of Audits – SA Fast Food/Take away food campaign</b>	
Number of employers audited	87
<ul style="list-style-type: none"> <li>• <i>Employers compliant</i></li> </ul>	60 (69%)
<ul style="list-style-type: none"> <li>• <i>Employers in contravention (voluntary compliance)</i></li> </ul>	27 (31%)
Total amount recovered	\$13,376
Number of employees paid	53

## Other findings

From the 27 employers found to be in contravention, 16 (59%) employers had minor contraventions relating to pay slip regulations. In the majority of cases the pay slips did not meet the legislated requirement of the superannuation fund name appearing on the pay slip.

Eleven (41%) of the 27 employers were found to have monetary contraventions. The underpayments of wages were attributed to;

- Junior employees not receiving a pay increase on their birthday as per their industrial instrument
- Employers being unaware that their agreement pay-rates were increased by their bargaining agent to meet the former fairness test.

In a few instances, employers had not registered their trainees' training contracts with Traineeship and Apprenticeship Services. Consequently several affected 'trainees' who were paid trainee rates were back paid their correct wage entitlement.

The audit revealed that those employers who were members of an employer association and/or received regular industrial relations assistance from their franchisor were better informed of their obligations. Consequently they were more likely to be found compliant compared to other employers. Many small business fast food/take away food operators not receiving industrial relations assistance from a third party commented on the fact that they had not had the time to become acquainted with the new Fair Work legislation.

Furthermore there was a clear distinction between the level of industrial relations assistance offered by the larger and smaller franchisors to their franchisees. Many of the larger franchise chains offered regular industrial relations technical seminars which they invited their franchisee to attend.

## Conclusion

The campaign has provided informative compliance data for the fast food industry in South Australia. Further it has provided some valuable insight into the impact of franchisor structures and industrial association membership on compliance levels.

The timing of the campaign provided the opportunity to educate employers on the NES. This was found to be particularly beneficial for many smaller businesses that were not aware of its introduction or its legislated requirements.

Based on the findings of this campaign a follow up campaign should be considered, particularly given that a number of employers will now be covered by a modern award as opposed to a pre-modern award. It is suggested that the FWO continues to work with key industry stakeholders to deliver further educative support to industry employers and consequently improve compliance within the industry.

*This work is copyright. You may download, display, print and reproduce this material in unaltered form only (retaining this notice) for your personal, non-commercial use or use within your organisation. Apart from any use as permitted under the Copyright Act 1968, all other rights are reserved. Requests and inquiries concerning reproduction and rights should be addressed to Commonwealth Copyright Administration, Attorney General's Department, National Circuit, Barton ACT 2600 or posted at <http://www.ag.gov.au/cca>*