



Fair Work  
OMBUDSMAN

# SA/WA/NT Retail campaign 2014

Report – December 2014

# Contents

<b>Summary</b>	<b>4</b>
<b>Campaign objectives</b>	<b>4</b>
<b>Why we conducted the campaign</b>	<b>4</b>
<b>Our industry partners</b>	<b>5</b>
<b>What we did</b>	<b>5</b>
<b>What we found</b>	<b>6</b>
<b>Findings by state / territory</b>	<b>7</b>
South Australia	7
Western Australia	8
Northern Territory	8
<b>Other findings</b>	<b>9</b>
<b>Concluding remarks</b>	<b>10</b>
<b>About the Fair Work Ombudsman</b>	<b>10</b>

## Campaign snapshot

Total of

252

businesses had their records assessed during the campaign

We found

69%

were paying their employees correctly

Over

\$60k

was recovered from 48 businesses on behalf of 238 employees

## Summary

In January 2014 the Fair Work Ombudsman (FWO) commenced a Retail campaign taking in South Australia, Western Australia and the Northern Territory (the campaign).

The campaign aimed to promote and assess compliance with Australia's workplace laws and the *General Retail Industry Award 2010* (the Award).

The campaign provided an opportunity to engage with the industry to help make compliance easier. We visited businesses to promote Australian workplace laws and the FWO. We also conducted email distributions to businesses in the industry and created a tutorial video explaining to employers the purpose of the campaign and what they can expect if they are selected for an assessment.

During the campaign Fair Work Inspectors conducted assessments of 252 retail businesses in both metropolitan and regional locations across SA, WA and the NT. These assessments were done both face to face (during visits to employers' premises), and by correspondence.

Our assessments of time and wage records revealed:

- 175 (69%) businesses were paying their employees correctly
- 199 (79%) businesses were compliant with record-keeping and pay slip requirements.

We recovered a total \$60 088 from 48 businesses, on behalf of 238 employees.

## Campaign objectives

Our aim was to promote and assess compliance with the *Fair Work Act 2009* (the Act), the *Fair Work Regulations 2009* (the Regulations) and the *General Retail Industry Award 2010* (the Award). In particular we wanted to:

- assess ordinary rates of pay
- assess penalty rates, loadings and overtime rates
- assess compliance with pay slip and record-keeping practices
- provide employers with information to help make compliance easier, in particular, by introducing them to [fairwork.gov.au](http://fairwork.gov.au) and tools including [Pay Check Plus](#).

## Why we conducted the campaign

Our analysis of complaints received from the retail industry in SA, WA and the NT during 2012 showed both an increase in complaints received and in the number of contraventions identified.

We recognised that conducting this campaign would provide an opportunity to reach a large number of employers across a geographically diverse area, with the intention of helping to make compliance easier.

We also sought to assess compliance with pay slip and record-keeping obligations. Fair Work Inspectors generally find that pay slip and record keeping errors occur due to employers being unaware of their obligations, as opposed to being deliberately non-complaint.

Detailed pay slips and accurate records help employees to understand and check their entitlements. It also ensures employers have access to important employee details.

## Our industry partners

We wrote to the following stakeholders to inform them of the campaign:

- Australian Retailers Association
- National Retail Association
- National Independent Retailers Association Inc.
- The Retailers Association
- Franchise Council of Australia
- Baking Association of Australia
- Master Grocers Australia
- Business SA
- WA Chamber of Commerce and Industry
- NT Chamber of Commerce and Industry
- Shop, Distributive and Allied Employees Association
- Australian Services Union
- United Voice

We invited these stakeholders to provide feedback on the campaign and to assist us in promoting it amongst their networks.

## What we did

In October and November 2013 we began promoting the campaign amongst businesses in the retail industry across WA, SA, and NT. We

promoted the campaign through visits across metropolitan Perth and Adelaide, a mass email distribution to businesses whose email addresses were accessible through the Australian Business Register, and wrote to regional retail businesses across WA, SA, and NT. Through our messaging we encouraged employers to view a [FWO video tutorial](#) developed to promote the campaign and encouraged them to review their time and wage records and seek our assistance in helping to make compliance easier.

In January and February 2014 we randomly selected 252 businesses from the retail industry in SA, WA and NT. We wrote to, and where possible, visited, businesses to advise them of the campaign and request time and wage records. In some cases where employers had the records on site we conducted assessments at their business premises.

We assessed their time and wage records to ensure compliance with the requirements of the Act, the Regulations and the Award.

Where we identified record-keeping and pay slip errors we provided practical information to employers about correct practices. We also required the employer to formally agree to maintain compliant records in the future and directed them to the [pay slip and record-keeping information](#) and templates on [fairwork.gov.au](http://fairwork.gov.au), to help make compliance easier.

Where we found that employees had been underpaid, we discussed our findings with the employer and explained what was required to rectify the errors.

We worked with employers to calculate any underpayments owing and encouraged them to use [Pay Check Plus](#) to verify pay rates. Before we finalised these cases we sought confirmation from the employer that all monies had been paid to affected employees.

During our visits we provided employers with information about the Award and their workplace obligations and promoted the freely available tools and resources at [fairwork.gov.au](http://fairwork.gov.au).

## What we found

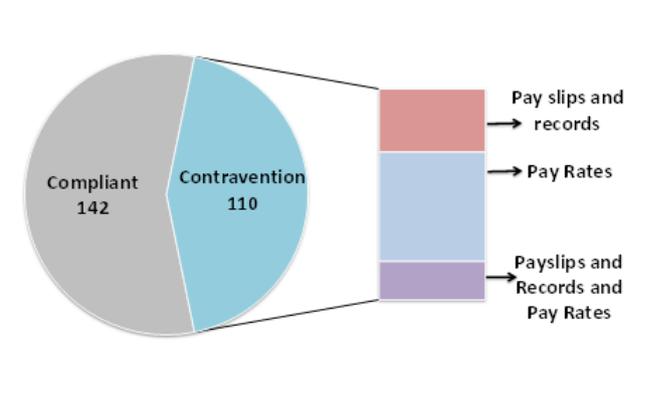
Of the 252 businesses we assessed:

- 175 (69%) were paying their employees correctly
- 199 (79%) were compliant with record-keeping and pay slip requirements.

More detailed analysis of our findings shows that:

- 142 (56%) employers were compliant with all requirements
- 110 (44%) employers had at least one error, of which:
  - 33 (13%) had errors relating to pay slips or records
  - 57 (23%) had errors relating to underpayments
  - 20 (8%) concerned both underpayments and pay slip or records errors

**Chart 1: Assessment results**



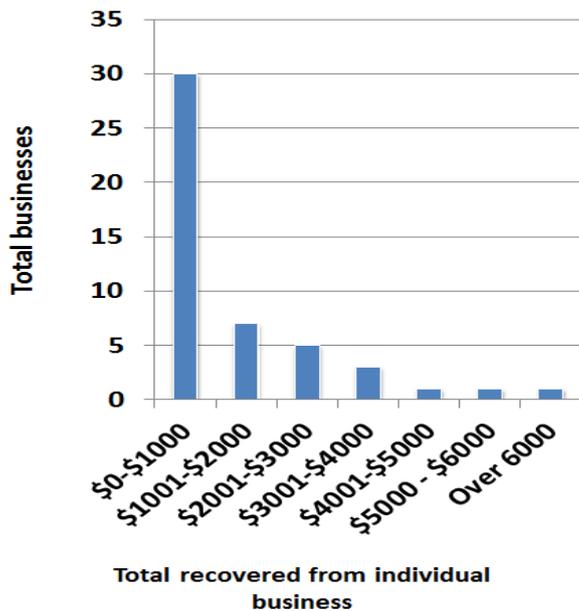
The 110 businesses with errors had a collective total of 138 individual errors.

Underpayment of hourly pay rates accounted for 36% of all errors, with a further 35% related to pay slips which had insufficient detail.

We recovered a total of \$60 088 from 48 businesses, on behalf of 238 employees.

Over 60% of recoveries from individual businesses were less than \$1000, though there were recoveries over \$7000 for some employers.

**Chart 2: Monetary recoveries**



- 25 had errors relating to underpayments
- 5 concerned both underpayment and pay slip or records errors

**Case study – ‘flat’ rates below minimum award entitlements**

Martin\* is the manager of a retail home wares store based in Adelaide (SA). When we assessed Martin’s time and wage records, we found he was paying his two part-time shop assistants a ‘flat rate’ of \$17.98 per hour. This was for all hours worked including work on a Saturday.

Under the Award, the rate of pay for a part-time employee at the employees’ level (Retail Employee Level 1) was \$18.13 for all ordinary hours, and \$21.76 for hours worked on Saturdays.

We discussed our findings with Martin and his accountant. He explained that he was not aware of the correct ordinary pay rates prescribed by the Award or that he needed to pay penalty rates for hours worked on weekends. Martin and his accountant had mistakenly believed the rate of \$17.98 per hour was enough to cover part-time retail staff for all the hours they worked.

We showed Martin’s accountant how to use [fairwork.gov.au](http://fairwork.gov.au) to look at the details of the Award and demonstrated how to correctly calculate rates of pay using [PayCheck Plus](#).

Martin subsequently understood that he was required to increase the rates he was

**Findings by state / territory**

**South Australia**

Of the 113 businesses assessed in SA we found:

- 83 (73%) were paying their employees correctly
- 90 (80%) were compliant with record-keeping and pay slip requirements.

We recovered a total of \$18 273 from 23 businesses on behalf of 75 employees.

The details of our findings identify that:

- 65 (58%) businesses were compliant with all requirements
- 48 (42%) businesses had at least one error, of which:
  - 18 had errors relating to pay slips or records

paying his employees, and that they were also entitled to back pay.

We assisted Martin to calculate the amounts owing to his employees and ensured that the two employees entitled to back pay received the \$681 they were owed.

\*not his actual name

## Western Australia

Of the 94 businesses we assessed in WA:

- 75 (80%) were paying their employees correctly
- 74 (79%) were compliant with record-keeping and pay slip requirements.

We recovered a total of \$28 966 from 12 businesses on behalf of 133 employees.

The details of our findings identify that:

- 62 (66%) businesses were compliant with all requirements
- 32 (34%) businesses had made at least one error, of which:
  - 12 had errors relating to pay slips or records
  - 13 had errors relating to underpayments
  - 7 concerned both underpayment and pay slip or records errors

## Case study - paying the wrong rates

At Victor's\* retail hardware business in WA a 16 year old casual employee was underpaid for work performed on a Saturday.

At the time, under the Award, 16 year old casual employees were entitled to \$12.22 per hour for working on a Saturday.

As we discussed our findings with Victor it appeared that he had overlooked the employee's recent birthday and had failed to increase her hourly rate of pay accordingly. We also found that Victor had issued pay slips that did not contain the name of the superannuation fund to which contributions were made.

We showed Victor how to use [Pay Check Plus](#) to calculate rates of pay for his employees, including juniors. We also directed him to the pay slip information at [fairwork.gov.au](http://fairwork.gov.au)

As a result, Victor paid the employee \$420 in back pay and he also committed to issuing correct pay slips in future.

\*not his actual name

## Northern Territory

Of the 45 businesses we assessed in the NT:

- 23 (51%) were paying their employees correctly
- 34 (75%) were compliant with record-keeping and pay slip requirements.

We recovered a total of \$12 849 from 13 businesses on behalf of 30 employees.

The details of our findings identify that:

- 15 (33%) employers were compliant with all requirements
- 30 (67%) employers had at least one error, of which:
  - 3 had errors relating to pay slips or records
  - 19 had errors relating to underpayments
  - 8 concerned both underpayment and pay slip or records errors

#### **Case study – part time employees**

Derek\*, a small business owner, operates a book shop in Darwin. Derek paid a flat rate of pay to his part time staff above the minimum ordinary hourly Award rate, but below the Sunday penalty rate.

Derek did not fully understand the duties relating to each classification level in the Award, nor was he aware of their entitlement to district allowances. Also, Derek had not documented the agreed part time hours of his staff, which meant he couldn't calculate any entitlement to overtime.

We provided educational material to Derek about award classifications, pay rates, allowances, and advice about how to document part-time working arrangements.

Derek was able to correctly calculate the outstanding entitlements due to his staff, by using [Pay Check Plus](#).

As a result of our interaction, the affected employee was paid their outstanding entitlements, Derek is now familiar with

correct entitlements as set out in the Award, and he has documented the part time hours to be worked by his employees.

\*not his actual name

## **Other findings**

Fair Work Inspectors found that most employers were engaged and keen to hear about the tools and resources on [fairwork.gov.au](http://fairwork.gov.au). This included demonstrations of [Pay Check Plus](#), including how to calculate applicable base rates of pay, penalty rates and allowances for their employees.

We also found some of the employers with monetary errors were paying flat hourly rates for all hours worked by their employees. In those instances the employers were paying what they thought was reasonable. Although the rates were generally above the base hourly rate required, they were below the Award rates payable for overtime, evening and weekend penalty rates. In these cases we were able to provide the employer with the correct overtime and penalty rates of pay.

Where employees were financially disadvantaged by the flat rates of pay employers were required to calculate and back pay any amounts owing. All monies were back paid without the need for formal enforcement action.

Most of the employers with pay slip errors were unaware of the content required and were therefore issuing pay slips without all necessary information, such as the employer ABN and the

name of the superannuation fund and contribution details.

We also found some businesses had misunderstood the duties associated with the different classification levels under the award. Where employers had incorrectly classified employees who were, for example, regularly opening and closing the premises, we provided them information about the appropriate classification and rates of pay and ensured the employer rectified any underpayments.

## Concluding remarks

The results of this campaign indicate nearly half of employers whose records we assessed had one or more errors. It's important for employers to understand that any errors, if not resolved, can escalate to problems in the workplace through employee grievances, affecting business success.

Encouragingly, most of the employers engaged with Fair Work Inspectors during the campaign and to asked questions to clarify their obligations.

Due to these engagements we are hopeful that they now have a greater understanding of their obligations and the role that the FWO can play in helping them.

We encourage employers in the industry to speak to their industry association or use the freely available tools and resources at [fairwork.gov.au](http://fairwork.gov.au), including [My Account](#), to help make compliance easier.

## 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 SA/WA/NT Retail campaign 2014.

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 campaigns please contact Lynda McAlary-Smith, Executive Director - Proactive Compliance & Education ([Lynda.McAlary-Smith@fwo.gov.au](mailto:Lynda.McAlary-Smith@fwo.gov.au))

Commonwealth of Australia 2014

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 enquiries concerning reproduction and rights should be emailed to [communications@fwo.gov.au](mailto:communications@fwo.gov.au)

Copyright Act 1968 (ComLaw website)