

# National Hospitality Industry Campaign Restaurants, Café's and Catering (Wave 2)

Report – June 2015

A report by the Fair Work Ombudsman under the Fair Work Act 2009

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# Campaign Snapshot

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More than  
**80k**

Businesses operating in the  
Australian Hospitality  
Industry.

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Over  
**760K**

Employees working in the  
Australian Hospitality  
Industry.

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Total of  
**4,561**

Complaints received from  
the Hospitality Industry in  
the 2010/11 Financial Year.

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A total of  
**42%**

Of businesses found to be  
compliant with all  
requirements

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More than  
**\$1.2m**

Recovered for 2,752  
employees from 456  
employers

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A total of  
**12%**

Of businesses had errors  
only relating to record  
keeping and payslips

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A total of  
**36%**

Of businesses had errors  
only relating to pay rates

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# About the Campaign

The National Hospitality Industry Campaign 2012 - 2014 was developed in response to a number of factors in the hospitality industry, namely the:

- large size of the industry;
- high contravention rates (both through complaints and previous campaigns);
- high levels of young workers and workers from Culturally and Linguistically Diverse (CALD) backgrounds
- high volume of calls through the Fair Work Infoline; and
- history of legal proceedings against businesses in the hospitality industry for breaching workplace laws.

Given the size of the hospitality industry, the National Hospitality Industry campaign was split into three specific industry sub-categories, namely:

- Wave 1: Accommodation/Taverns & Bars;
- Wave 2: Restaurants, Café's and Catering; and
- Wave 3: Takeaway Foods.

Wave 1 of the National Hospitality Industry Campaign (Accommodation/Taverns & Bars) was conducted during 2012/13 and involved an audit of time and wages records of 750 businesses, finding 515 (69%) employers compliant; and 235 (31%) employers with errors. A total of \$367,115 was recovered on behalf of 629 employees. Further information on this campaign is available at [www.fairwork.gov.au/hospitality](http://www.fairwork.gov.au/hospitality)

The results and findings of Wave 2 of the National Hospitality Industry Campaign - Restaurant's Café's and Catering (the Campaign) are detailed in this report.

## Outcomes at a Glance

To maximise awareness of the campaign and encourage greater compliance within the industry the Campaign was undertaken in two stages:

- communication and public awareness; and
- an audit of pay and conditions.

During the Campaign 1,066 businesses were audited for compliance with wages and record keeping obligations. Of these 451 (42%) were compliant and 615 (58%) of businesses had not met all of their workplace relations obligations. The majority of errors identified related to wage entitlements.

The outcomes of the Campaign were:

- \$1,215,212 in underpayments recovered from 456 businesses on behalf of 2,752 employees
- 2 letters of caution issued; and
- 2 infringement notices issued.

## Industry Profile

In preparation for this campaign, we analysed several sources of data relevant at the time. According to the Australian Business Register (ABR), in May 2011 there were approximately 41,000 employing entities in the Cafés, Restaurants and Catering industry, with the majority of businesses located in NSW, Victoria and Queensland.

Overall, during the 2010-11 calendar years, 4,561 complaints were received from the Accommodation and Food Services industry, with 47% (2,141) from Cafés and Restaurants (1,938) and Catering Services (203).

Of the complaints received from the Cafe's & Restaurants sector, 59% (1,143) had monetary errors and 42% (814) were from vulnerable employees. In the Catering Services sector, 64% (130) had monetary errors and 26% (53) were from vulnerable employees. Overall these sectors recorded a 59% (1,273/2,141) monetary error rate and a 40% (867) vulnerability rate.

FWO complaint data also shows, the median age of employees within the Cafes, Restaurants and Catering industries is 23, with the highest proportion being the 15-19 age group (32% of employees). However, this age group had the lowest complaint rate (16%) indicating they may be hesitant to seek help or unaware of their entitlements.

The highest proportion of complaints (56%) were received from the 20-24 and 25-34 age groups, who represent 39% of the total industry workforce. In addition the ABS (May 2011) identified that the Accommodation and Food Services industry (as a whole) is dominated by low skilled workers with 60.7% having no post-secondary qualification, which in part, reflects the younger age profile across these sectors.

## Communication and Public Awareness

Several activities were undertaken to promote the campaign and assist employers to understand their workplace relations obligations prior to them being audited.

As part of the communication strategy for the wider Hospitality Industry Campaign we notified industry stakeholders of our intention to assess compliance within the cafes and restaurants sector. Stakeholders included:

- Restaurant and Catering Australia (RCA);
- United Voice;
- Franchise Council of Australia (FCA);

- Shop Distributive and Allied Employees Association;
- Service Industry Legal Service (SILS);
- Australian Culinary Association; and
- Japanese/Australian Catering and Restaurant Information Service (JACRIS).

Key issues were discussed with Restaurant and Catering Australia and the campaign was co-designed with them.

52,789 employers were contacted and advised of the campaign. These employers were directed to our dedicated web page [www.fairwork.gov.au/hospitality](http://www.fairwork.gov.au/hospitality) and invited to attend an industry specific webinar held on 27 May 2014.

The campaign was also advertised through a number of digital platforms, the full description and result can be viewed in Appendix A.

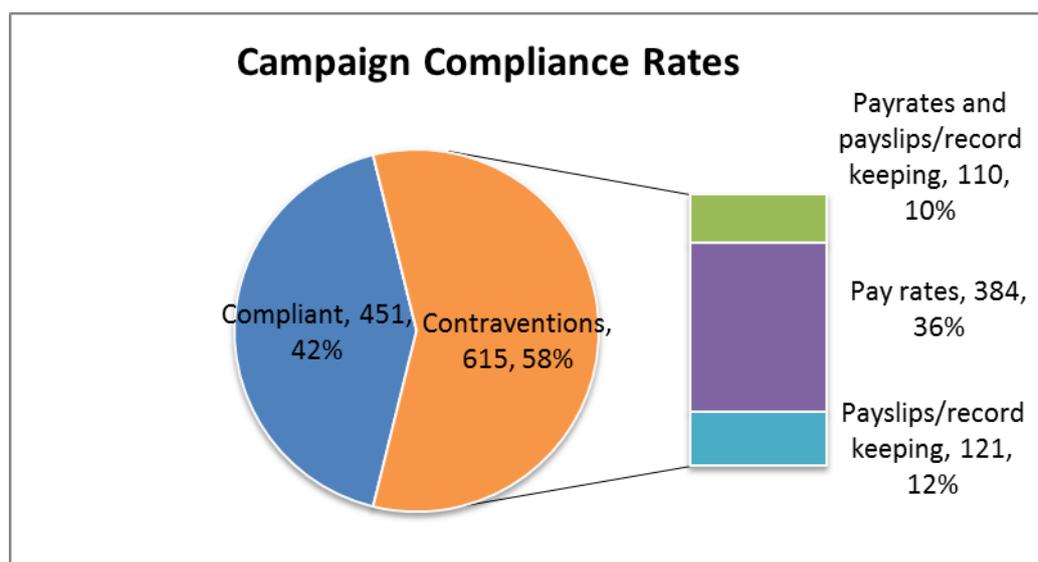
## Wages Audit

The wages audit component of the Campaign included audits for 1,066 businesses, assessing compliance with the *Restaurant Industry Award 2010* (the award), the *Fair Work Act 2009* (the Act) and the *Fair Work Regulations 2009* (the Regulations).

From the 1,066 audits completed, we found:

- 451 (42%) of businesses compliant with all requirements
- 615 (58%) of businesses with at least one error, of which
  - 384 (36%) had errors relating to pay rates
  - 121 (12%) had errors relating to payslips or record-keeping; and
  - 110 (10%) had both monetary and non-monetary errors

Figure 2 – Campaign compliance rates



Therefore overall:

- 572 (54%) employers were paying their employees correctly
- 835 (78%) employers were compliant with record-keeping and pay slip requirements
- 879 individual errors were recorded from 615 businesses
- 17% of the errors were related to weekend penalty rates
- \$1,215,212 was recovered from 456 businesses on behalf of 2,752 employees (with the recovery amounts ranging from under \$20 to over \$40,000)
- Two formal letters of caution were issued; and
- Two Infringement Notices were issued

The most commonly identified errors were employers providing flat rates of pay for all hours worked with many employers advising they had adopted this practice to simplify their payroll process. In many cases the hourly rate paid was not enough to cover hours attracting penalties, loadings or overtime. In respect of pay slips and record-keeping, the most common errors related to insufficient information being recorded on payslips, with employers commonly advising they weren't aware which information was required to be included.

In some States additional reasons for non-compliance were reported. These are listed below in the regional findings.

## Regional Findings

### NSW/ACT

Of the 286 businesses we assessed in New South Wales (**NSW**):

- 140 (49%) employers compliant with all requirements
- 146 (51%) employers had at least one error, of which:
  - 104 (36%) had errors relating to pay rates
  - 28 (10%) had errors relating to record-keeping and payslips
  - 14 (5%) concerned both pay slips/record-keeping and pay rates.

This means that:

- 168 (59%) employers were paying their employees correctly
- 244 (85%) employers were compliant with record-keeping and pay slip requirements.

There were a total of 195 individual errors identified from the 104 businesses that had monetary errors. Underpayment of the minimum base hourly rate accounted for 50% of these errors and 18% related to weekend penalties.

A total of \$282,996 was recovered for 788 employees from 107 businesses.

Of the 29 businesses we assessed in the Australian Capital Territory (**ACT**):

- 12 (41%) employers compliant with all requirements
- 17 (59%) employers had at least one error, of which:
  - 16 (55%) had errors relating to pay rates
  - 1 (4%) had errors relating to records and payslips

This means that:

- 13 (45%) employers were paying their employees correctly
- 28 (96%) employers were compliant with record-keeping and pay slip requirements.

A total of \$18,759 was recovered for 43 employees from 15 businesses.

## Victoria/Tasmania

Of the 279 businesses we assessed in **Victoria**:

- 80 (29%) employers were compliant with all requirements
- 199 (71%) employers had at least one error, of which:
  - 99 (35%) had errors relating to pay rates
  - 55 (20%) had errors relating to record-keeping and payslips
  - 45 (16%) concerned both pay slips/record - keeping and pay rate errors.

This means that:

- 135 (48%) employers were paying their employees correctly
- 179 (64%) employers were compliant with record-keeping and pay slip requirements.

There were a total of 294 individual errors from 199 businesses. Underpayment of the minimum base hourly rate accounted for 33%, 14% related to incorrect weekend penalties and a further 30% relating to payslips having incorrect information.

A total of \$386,389 was recovered for 698 employees from 138 businesses.

Of the 33 businesses we assessed in **Tasmania**:

- 11 (33%) employers compliant with all requirements
- 22 (67%) employers had at least one error, of which:
  - 16 (49%) had errors relating to pay rates
  - 1 (3%) had errors relating to records and payslips
  - 5 (15%) concerned both pay slip and records and pay rates.

This means that:

- 12 (36%) employers were paying their employees correctly; and
- 26 (79%) employers were compliant with record-keeping and pay slip requirements.

There was a total of 28 individual errors from 22 businesses. Underpayment of minimum base rate accounted for 50% of these errors. In total, we recovered \$29,795 for 77 employees from 16 businesses.

We also identified a general lack of awareness/understanding of award provisions, for example employers continuing to pay introductory classification rates (beyond the initial three month period) or annualised salary arrangements that had been made incorrectly (i.e. paying less than the 25% above the applicable classification as required).

## Northern Territory

Of the 15 businesses we assessed in the **Northern Territory**:

- 5 (33%) employers compliant with all requirements
- 10 (67%) employers had at least one error, of which:
  - 5 (33%) had errors relating to pay rates
  - 3 (21%) had errors relating to records and pay slips
  - 2 (13%) concerned both pay slips/records and pay rates

This means that:

- 8 (53%) employers were paying their employees correctly
- 10 (67%) employers were compliant with record-keeping and pay slip requirements.

In total, we recovered \$25,676 from 7 businesses on behalf of 45 employees.

The Northern Territory, when compared to the national results, recorded a considerably higher error rate (67% to 58%).

## Queensland

Of the 299 businesses we assessed in **Queensland**:

- 151 (51%) employers compliant with all requirements
- 148 (49%) employers had at least one error, of which:
  - 103 (34%) had errors relating to pay rates
  - 20 (7%) had errors relating to record-keeping and payslips; and
  - 25 (8%) concerned both pay slips/record-keeping and pay rates.

This means that:

- 171 (57%) employers were paying their employees correctly; and
- 254 (85%) employers were compliant with record-keeping and pay slip requirements.

There was a total of 225 individual errors from 148 businesses. Underpayment of the minimum base hourly rate accounted for 44% of the errors, 25% related to weekend penalties and 15% for incorrect payslip information. In total, we recovered \$355,980 from 121 businesses on behalf of 846 employees.

We identified a number of businesses incorrectly paying juniors, which was mostly due to a failure to increase their pay rates after an employee's birthday. We further identified many businesses were unaware of the difference between part time and casual employment. Specifically, we found that part time hourly rates were paid but other entitlements (i.e. personal/annual leave) were often not provided.

## Western Australia

Of the 38 businesses we assessed in **Western Australia**:

- 18 (47%) employers to be compliant with all requirements
- 20 (53%) employers had at least one error, of which:
  - 12 (31%) had errors relating to pay rates
  - 4 (11%) had errors relating to records and payslips
  - 4 (11%) concerned both pay slips/records and pay rates.

This means that:

- 22 (58%) employers were paying their employees correctly
- 30 (79%) employers were compliant with record-keeping and pay slip requirements.

In total, we recovered \$51,650 from 16 businesses on behalf of 62 employees.

## South Australia

Of the 87 businesses we assessed in **South Australia**:

- 34 (39%) employers compliant with all requirements
- 53 (61%) employers had at least one error, of which:
  - 29 (33%) had errors relating to pay rates
  - 9 (11%) had errors relating to records and payslips
  - 15 (17%) concerned both pay slips/ records and pay rates

This means that:

- 43 (49%) employers were paying their employees correctly; and
- 63 (72%) employers were compliant with record-keeping and pay slip requirements.

There were 76 individual errors from 53 businesses. Underpayment of the minimum base hourly rate accounted for 51% of those errors with a further 16% relating to payslip content. In total, we recovered \$63,967 from 36 businesses on behalf of 193 employees.

In South Australia, we most commonly identified that underpayment of hourly rates occurred due to incorrect classification of Food and Beverage attendants (Level 1 instead of Level 2), with most employers advising they weren't aware of the difference between these classifications<sup>i</sup>.

## Conclusion

The National Hospitality Industry Campaign (wave 2) – Restaurant's, Café's and Catering identified a 58% (615 businesses) contravention rate, which most commonly related to pay rates. It is important to note that this contravention rate is higher than the 38% contravention rate identified during wave 1 of the National Hospitality Industry Campaign – (Accommodation, Taverns & Bars). Therefore whilst these results are consistent with the 59% contravention rate identified in our pre-complaint data (from 2010 and 2011 calendar years), the results demonstrate this sub-industry requires continued intervention from the Fair Work Ombudsman. We found employer association membership to be low among the employers audited in this campaign. We expect that increased membership of an employer association is likely to reduce non-compliance in this sector.

## 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.

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 National Hospitality Industry Campaign (wave 2) – Restaurant's, Café's and Catering. For further information and media enquiries please contact the media team at [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 and Education at [Lynda.McAlary-Smith@fwo.gov.au](mailto:Lynda.McAlary-Smith@fwo.gov.au)

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<sup>i</sup> For classification definitions See Schedule B of the [Restaurant Industry Award 2010 \(MA000119\)](#). Please note: There have also been changes to the classification structure in this award as determined by the Fair Work Commission (FWC), effective from 1 July 2014

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## Appendix A

### FWO Communication Activities

52,789 employers were contacted advising them about the campaign. They were directed to our dedicated web page [www.fairwork.gov.au/hospitality](http://www.fairwork.gov.au/hospitality).

An industry specific webinar was held on 27 May 2014 - with 105 attendees, 101 further FWO YouTube channel views and 108 visits to the FWO website following webinar participation).

The Campaign was also advertised via a number of digital platforms, achieving the following results:

- 4,459 views of the dedicated webpage between 1 April 2013 and 11 July 2013 (including 927 visits on 16 April 2014 – when businesses were notified via email about the campaign);
- 5,309 unique opens of the electronic email notification (32% of recipients) and a further 5% of recipients following the link to our website;
- 778,733 views on google from search matches (including 2,125 views to the dedicated hospitality section of our website);
- 9 tweets and 17 retweets through twitter; and
- Reaching an audience of over 750 people in each of our two Facebook advertisements (with a further 119,157 viewings of our campaign title through Facebook advertising).

The campaign also received extensive coverage through traditional media channels including a number of TV stations, more than 200 radio broadcasts (including interviews with the Media Director on ABC NewsRadio), coverage on over 80 websites and exposure through print media including the Hobart Mercury, Herald Sun, Northern Territory News and Canberra Times (who covered the campaign launch announcement) and another 45 other regional and community publications.

