



# Auditing Victoria - Dandenong, Warrnambool and Otway Ranges Campaign Report

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# AUDITING VICTORIA – DANDENONG, WARRNAMBOOL AND OTWAY RANGES

## WHAT DID WE FIND?

### DANDENONG



**42%** of businesses non-compliant with all requirements



**26%** of businesses not paying their employees correctly



**23%** of businesses non-compliant with pay slip & record-keeping obligations



**\$428 676** recovered for 185 employees from 46 businesses

### WARRNAMBOOL – OTWAY RANGES



**41%** of businesses non-compliant with all requirements



**28%** of businesses not paying their employees correctly



**21%** of businesses non-compliant with pay slip & record-keeping obligations



**\$195 656** recovered for 200 employees from 48 businesses

## WHERE DID WE GO?

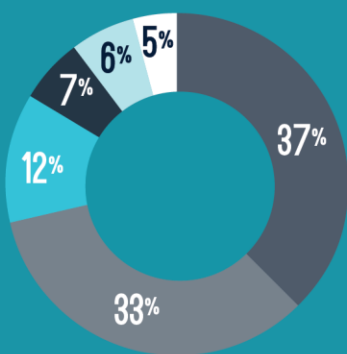


**504 BUSINESSES AUDITED**



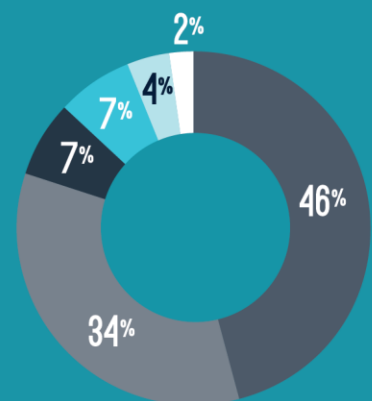
DANDENONG  
DANDENONG SOUTH  
CAMPERDOWN  
COLAC

KEYSBOROUGH  
NOBLE PARK  
SPRINGVALE  
WARRNAMBOOL



### BREACHES IDENTIFIED

- PAY SLIPS
- PENALTY RATES
- OTHER
- RECORD-KEEPING
- WAGES
- OVERTIME



**31**

FORMAL  
CAUTIONS



**15**

INFRINGEMENT  
NOTICES



**9**

COMPLIANCE  
NOTICES



**1**

ENFORCEABLE  
UNDERTAKING

# Summary

This report provides results from an education and compliance campaign undertaken by the Fair Work Ombudsman (FWO) in two Victorian regions, specifically:

- Dandenong, encompassing the Dandenong city centre and surrounding suburbs; and
- Warrnambool and Otway Ranges including Colac and surrounding regions.

The campaign was initiated in these areas based on the following factors:

- In the Dandenong region a high proportion of employees are from non-English speaking backgrounds (58.2%) - this number is significantly higher than any other regions in Victoria, and the state average of 23.1%<sup>1</sup>. Due to their potential vulnerability, these employees benefit from additional support and education from the FWO.
- The Dandenong region saw an increase of 307 employing businesses for the 2014-15 financial year, which is a 4.6% increase in the number of employing businesses, higher than the state average of 2.9% for the period. This indicates there are a number of new businesses in the area that may not have operational experience with Australian workplace laws<sup>2</sup>.
- The Warrnambool/Otway Ranges region saw strong growth in agriculture, forestry and fishing industries, (an increase of 9400 workers in the five years prior to the campaign) while most other industries suffered a reduction, with the region experiencing an overall reduction of 1500 in employment numbers. This indicates that there may have been significant labour movement between industries<sup>3</sup>.

Of the 253 businesses audited in the Dandenong region:

- 106 (42%) businesses were not compliant with all requirements of workplace relations laws
- Of these 106 non-compliant businesses, they had at least one breach:
  - 47 (19%) had breaches relating to pay rates
  - 39 (15%) had breaches relating to payslips and/or record-keeping
  - 20 (8%) had both monetary and non-monetary breaches.

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<sup>1</sup> ABS – Census 2011

<sup>2</sup> ABS – Economy & Industry data 2014-15.

<sup>3</sup> Department of Employment, Labour market Information portal, Industry Employment Profiles—Australian regions (four quarter averages of Original Labour Force Survey Data, ANZSIC Division)

Of the 251 businesses audited in the Warrnambool/Otway region:

- 104 (41%) businesses were not compliant with all requirements
- Of these 104 non-complaint businesses, they had at least one breach:
  - 52 (21%) had breaches relating to pay rates
  - 33 (13%) had breaches relating to pay slips or record-keeping
  - 19 (7%) had both pay rate and records/pay slips breaches.

A number of compliance and enforcement outcomes resulted from the campaign, including:

- 31 formal cautions
- 15 infringement notices, at a total of \$3600
- Nine compliance notices, and a total of \$63 430.12 was recovered from eight businesses for 31 employees
- One enforceable undertaking recovering back-payments of \$23 206.45 to 16 employees.

# The campaign's methodology

The FWO liaised with stakeholders in the regions to discuss the planning, delivery and promotion of the campaign.

The campaign received media coverage through regional print and digital media publications, including the Dandenong Leader, Greater Dandenong Weekly, Dynamic Business website, the Standard, Hospitality Magazine, Noodl and the Hospitality Magazine website. This local media coverage informed a broader audience than those specifically included in the campaign. Many businesses advised they had heard about the campaign through the media coverage, before the FWO had contacted them, and were better prepared to work with the FWO during the campaign.

Businesses were selected for participation in this campaign at random, with a higher weighting assigned to those industry sectors from which the FWO had received higher numbers of requests for assistance involving a workplace dispute

Fair Work Inspectors (inspectors) contacted selected businesses and assessed time and wages records for compliance with the *Fair Work Act 2009* (the Act), the *Fair Work Regulations 2009* (the Regulations) and the applicable award or agreement. Where inspectors identified breaches, they required businesses to rectify the issue and provide proof of having done so (including back-paying any underpaid employees).

Businesses audited in the region were covered by awards that included:

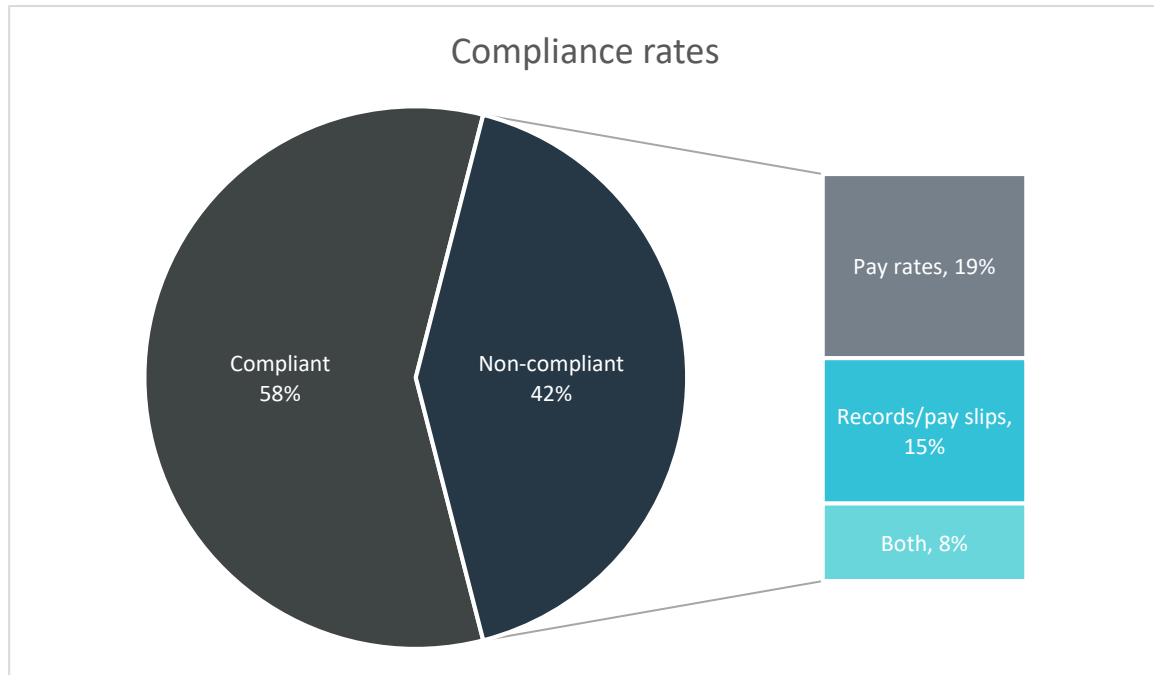
- Manufacturing and Associated Industries and Occupations Award 2010
- Building and Construction General On-site Award 2010
- Clerks - Private Sector Award 2010
- General Retail Industry Award 2010
- Pastoral Award 2010
- Fast Food Industry Award 2010
- Hospitality Industry (General) Award 2010.

Inspectors also provided businesses with information and resources to help them comply with their obligations under Australian workplace laws. In particular, businesses were provided with online resources available on the FWO website ([www.fairwork.gov.au](http://www.fairwork.gov.au)) including [pay rates](#), content relating to [hiring employees](#), [My account](#) and [online training courses](#).

# Key findings

The campaign had a number of key findings for each region. These are outlined below.

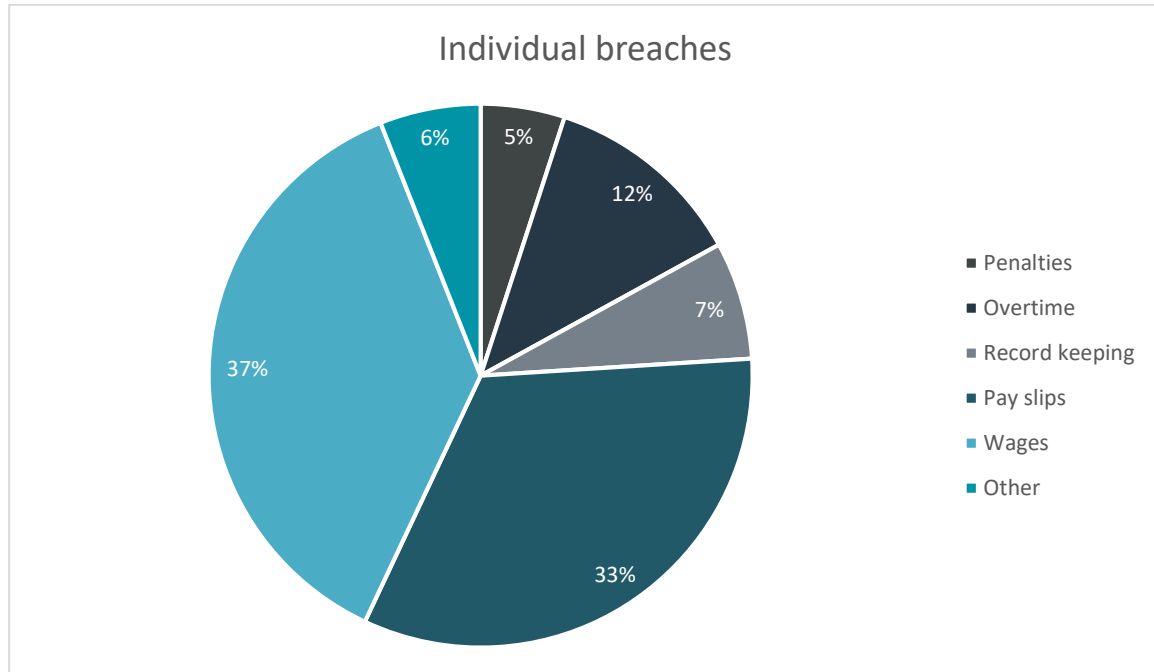
## Dandenong



Of the 253 businesses audited in the Dandenong region:

- 106 (42%) businesses had at least one breach:
  - 47 (19%) had breaches relating to pay rates
  - 39 (15%) had breaches relating to payslips and/or record-keeping
  - 20 (8%) had both monetary and non-monetary breaches.
- \$428 676 was recovered from 46 businesses for 185 employees.

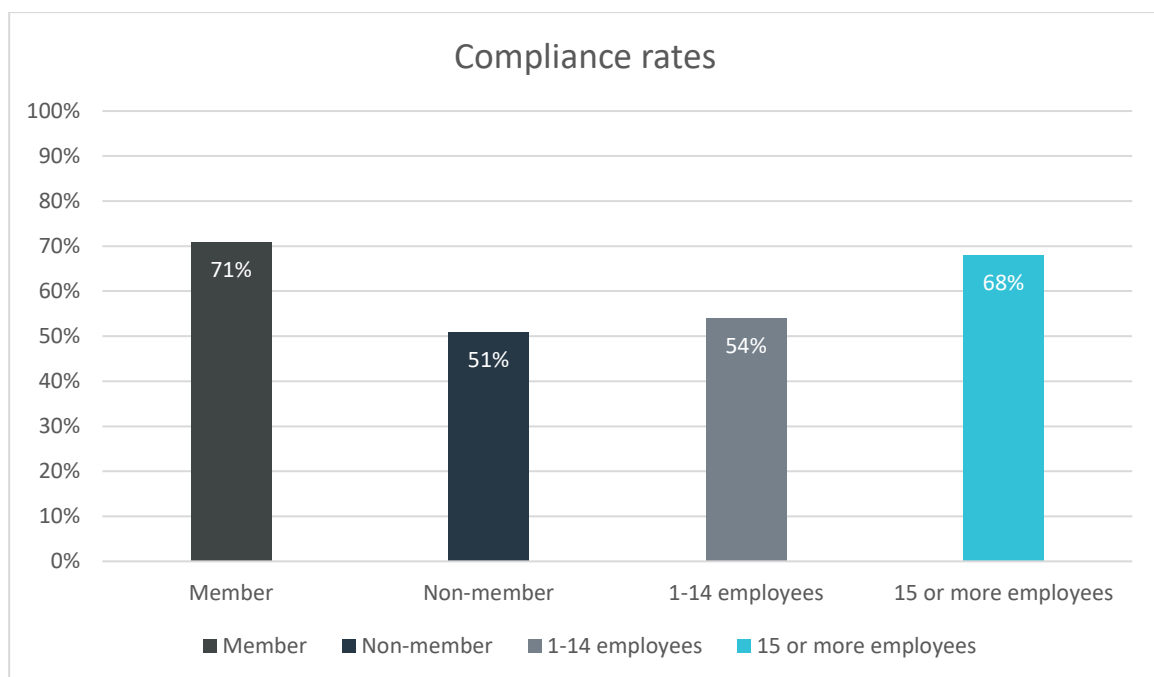
## Breaches – Dandenong



The 106 businesses that were found to be non-compliant had a total of 150 individual breaches. The most common breaches related to wages (37%), pay slips (33%) and overtime (12%).

The monies recovered following FWO's compliance activities ranged from minor amounts to significant ones. The lowest recovery was \$17 resulting from minor breaches relating to a single employee, while the largest recovery was \$150 261 for five employees.

## Membership and business size – Dandenong

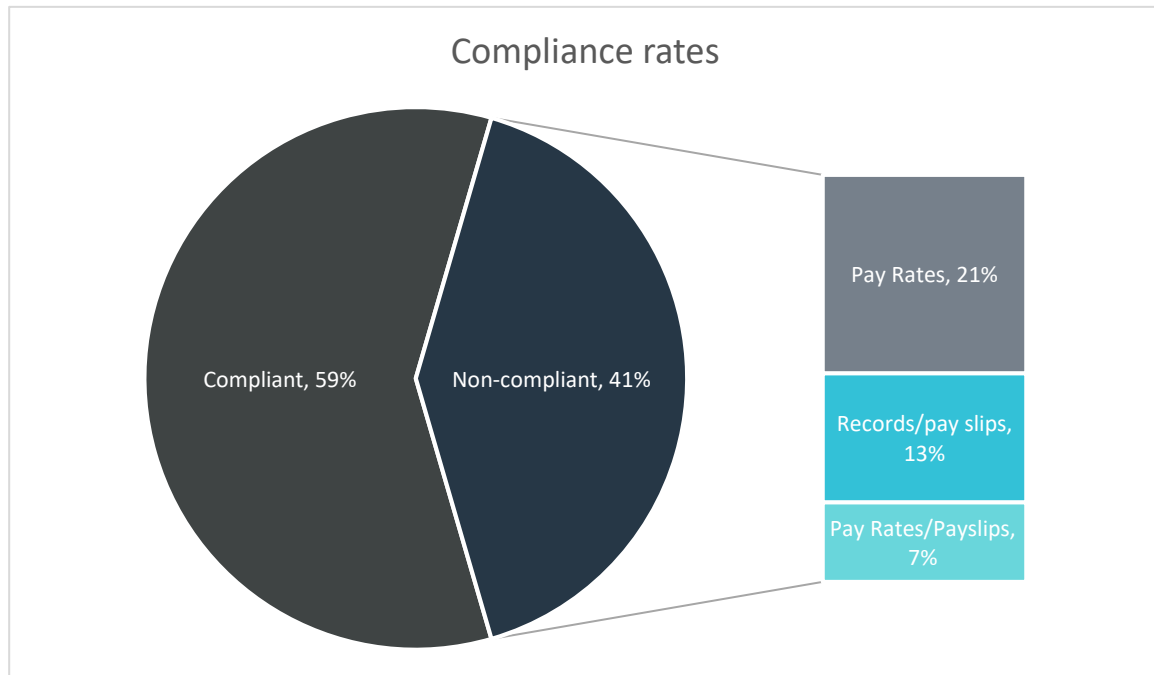




The FWO has found that businesses are more likely to be compliant with workplace laws when they have access to specialised workplace relations advice. Such as through membership to an employer organisation, or access to accounting or legal advice or a dedicated human resources professional within the business. Larger businesses are more likely to have the resources to employ a human resources or payroll professional in-house.

The campaign found that larger businesses (with 15 or more employees) had a higher compliance rate of 68% compared with 54% for smaller businesses. The campaign confirmed that businesses who were members of an industry or employer organisation benefited from the additional expert support, and had a higher compliance rate of 71% compared with 51% non-compliance.

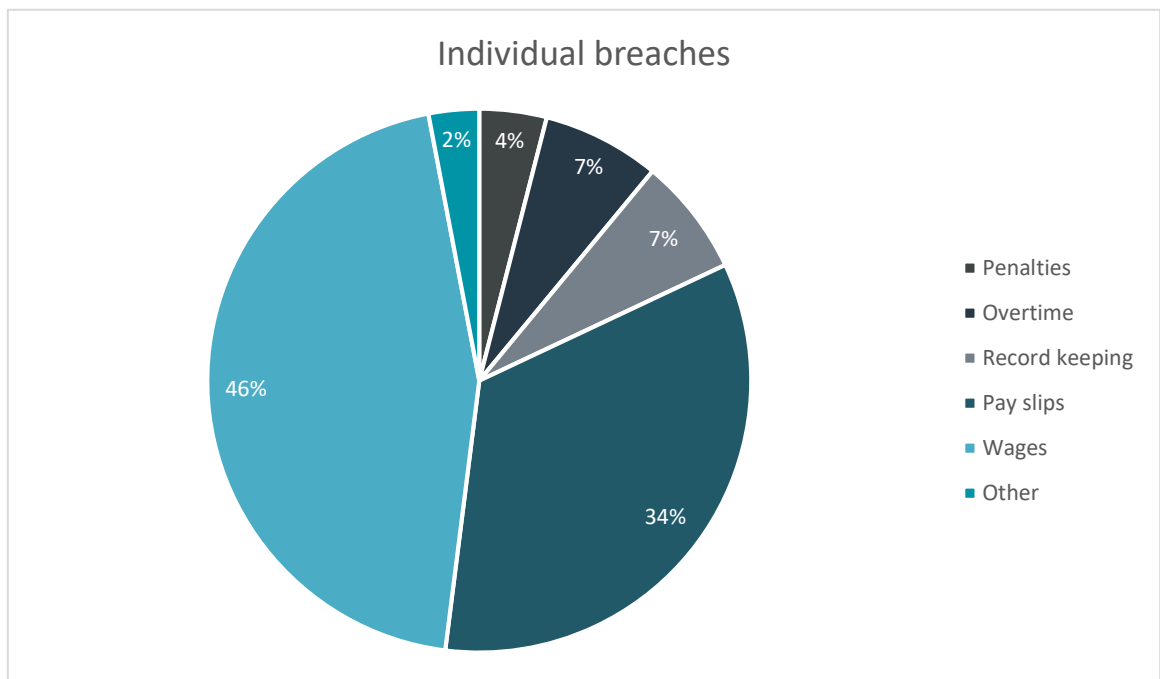
## Warrnambool / Otway region



Of the 251 businesses audited in the Warrnambool/Otway region:

- 147 (59%) businesses were compliant with all requirements
- 104 (41%) businesses had at least one breach:
  - 52 (21%) had breaches relating to pay rates
  - 33 (13%) had breaches relating to pay slips or record-keeping
  - 19 (7%) had both pay rate and records/pay slips breaches.
- \$195 656 was recovered from 48 businesses for 200 employees.

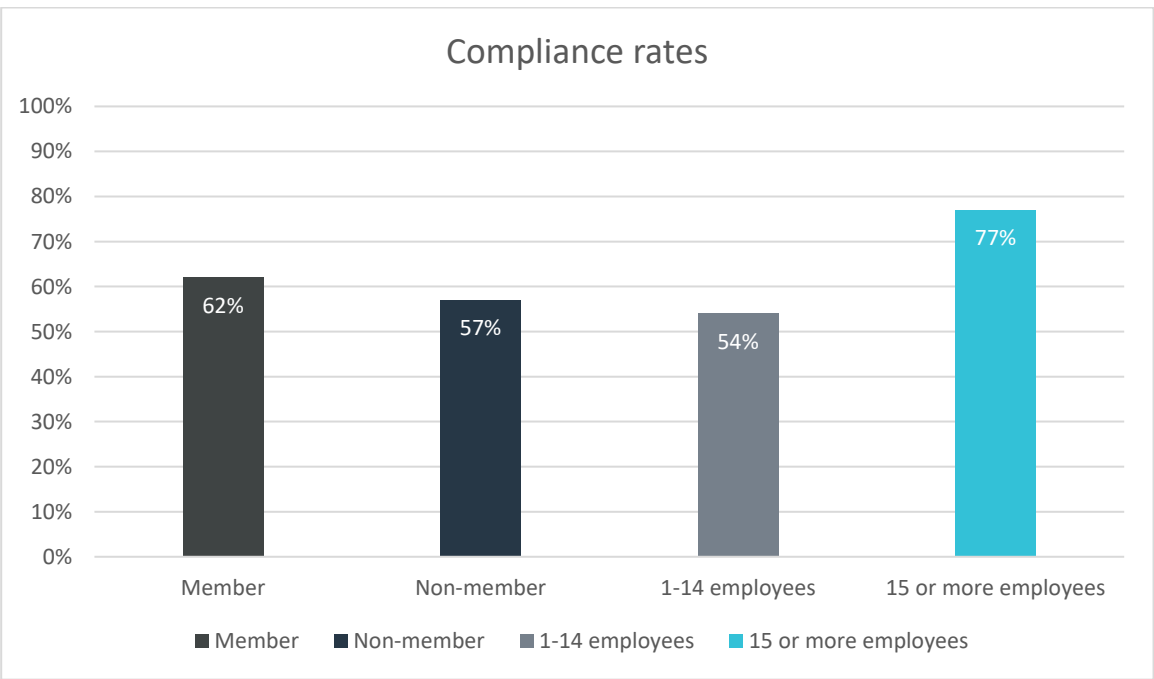
Breaches – Warrnambool / Otway region



The 104 businesses that were found to be non-compliant had a total of 134 individual breaches. The most common breaches related to wages (46%), pay slips (34%) and overtime (7%).

The monies recovered following FWO’s compliance activities ranged from minor amounts to significant ones. The lowest recovery was \$25 resulting from minor breaches, while the largest recovery was \$37 754.

Membership and business size – Warrnambool / Otway region



Once again, businesses that were members of an industry or employer association benefited from access to expert knowledge and support. These businesses had a compliance rate of 62%, while businesses that were not members, had a compliance rate of 57%.

The activity also found that larger businesses (with 15 or more employees), with the resources to access specialised advice or with a dedicated in-house human resources or payroll employee, had a higher compliance rate of 77% than smaller businesses at 54%.

# Outcomes

A number of compliance and enforcement outcomes resulted from the campaign, including:

- 31 formal cautions
- 15 infringement notices, at a total of \$3 600
- Nine compliance notices, and a total of \$63 430.12 was recovered from eight businesses for 31 employees
- One enforceable undertaking recovering back-payments of \$23 206.45 to 16 employees.

## Case study – Formal caution

Thirty-one formal cautions were issued to employers during the campaign. Formal cautions are issued when the FWO has found non-compliance and it is considered appropriate 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 that the business was issued with a formal caution (in writing) will be taken into account in deciding whether to commence civil proceedings against the business, and it may be used as evidence in any penalty determinations.

The FWO conducted an audit of a plumbing business and identified that a number of employees, the majority were apprentices, had been underpaid against the applicable enterprise bargaining agreement. This was due to the employer not having reviewed entitlements in line with the annual minimum wage increase.

The employer was notified of the contraventions and cooperated with the FWO in ensuring that all outstanding entitlements were calculated and back-paid, amounting to nearly \$15 000 for seven employees. The FWO issued a letter of caution to ensure future compliance, given the quantum of the back-payment and the majority of the affected workforce were considered vulnerable.

### Case study - Infringement notices

Fifteen infringement notices were issued to employers during the campaign. An infringement notice is a fine given to a business for non-compliance with record-keeping or pay slip requirements of the Act and the Regulations. A total of \$3600 in infringement notices was issued during the campaign.

A Fair Work Inspector audited a plastering business and discovered that one of its two employees had been underpaid their casual rate of pay, in accordance with the *Building and Construction General On-Site Award 2010*. The inspector also identified that the employee's pay slips were missing the company's Australian Business Number (ABN), date of payment, hours worked and superannuation fund name.

Failure to provide the required information on pay slips is a significant breach of the Act as it impedes a worker's ability to know whether they are receiving their lawful entitlements. The FWO issued an infringement notice of \$360 for the pay slips failing to meet the requirements of the Regulations. The FWO also recovered \$357.43 in back-pay for the underpaid employee.

### Case study - Compliance notices

Nine compliance notices were issued to employers during the campaign. A compliance notice is a written notice legally requiring a business to rectify breaches of the Act. Failure to comply with a compliance notice results in the FWO commencing legal proceedings. A total of \$63 430.12 was recovered from eight businesses for 31 employees as a result of the compliance notices issued.

A Fair Work Inspector audited the records of a grocery business that employed casual employees covered by the *General Retail Industry Award 2010*.

The inspector identified that the employer had failed to meet the minimum base rates of pay and penalty rates outlined in the award. The FWO issued the business with a compliance notice for the amounts owed to each employee. The employer co-operated with the FWO and rectified the underpayment in accordance with the compliance notice by back-paying four employees a combined total of \$14 455.

## Case study - Enforceable undertakings

One enforceable undertaking (EU) was executed during the campaign. An EU is a publically available, legally binding agreement between an employer and the FWO in which the employer admits to the breaches, expresses contrition and commits to paying all outstanding monies owed to their employees. As well as, terms that ensure future compliance, such as training sessions for senior managers, and periodic compliance reporting. An EU typically operates for a period of between two and five years.

The FWO entered into an [enforceable undertaking](#) with Roo and Oz Sheetmetal Pty Ltd on 7 October 2016. It was found through the course of the audit that the business had failed to meet their minimum wage obligations under the Manufacturing and Associated Industries Award 2010.

Discussions with the employer identified that the underpayments had arisen because of a failure to understand and interpret the clauses of the award.

The underpayment of hourly rates, weekend/shift/public holiday penalties and casual loadings resulted in the business back-paying \$23 206.45 to 16 employees.

As outlined in the EU, the business agreed to a number of actions, including:

- registering a FWO My account and subscribing to FWO alerts and newsletters relevant to the organisation
- sending a letter of apology to affected employees
- engaging an external body, such as an accounting firm, to undertake periodic audits each year, and providing evidence of the audits to the FWO
- providing the FWO with details of systems and processes already in place, or to be implemented, to comply with the Act, Regulations and the award.

## Conclusion

Similar levels of compliance were found in the Dandenong (58% compliant) and Warrnambool-Otway (59% compliant) regions.. These figures fall just below the national compliance average of 61% from audit campaigns for the 2015-16 period<sup>4</sup>.

Pay slip breaches and underpayments of hourly rates dominated the individual breach types across the different regions. The most common reasons given by employers for non-compliance included a lack of awareness or a misunderstanding of their obligations under the legislation, and misinterpretation of award clauses or classification definitions. In more serious cases, a business decision had been made to not comply, based on affordability and remaining competitive, or ease of administrative processes.

Larger businesses and members of industry or employer associations were found to be more compliant with their workplace relations obligations than smaller businesses, which often lack ready access to professional support. This demonstrates the importance of FWO's continuing focus on providing advice and assistance to small businesses.

The results of this campaign will inform future education and audit activities, which may include businesses from the region. All businesses found to be non-compliant during this campaign will be considered for follow up audits as part of the FWO's ongoing National Compliance Monitoring Campaign.

The FWO will continue to work with businesses across Victoria to encourage sustained, conscious compliance with workplace laws, providing information, tools and resources designed to make compliance easier.

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<sup>4</sup> [Fair Work Ombudsman Annual Report 2015-16](#)



# 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 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 both the Dandenong and the Warrnambool-Otway Ranges Regional Campaigns. 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 Glenn Jordan, Executive Director - Proactive Compliance and Education at [glenn.jordan@fwo.gov.au](mailto:glenn.jordan@fwo.gov.au).