

Food Precincts Activities – a report on compliance activities undertaken by the Fair Work Ombudsman

July 2018

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FOOD PRECINCTS ACTIVITIES

HOSPITALITY INDUSTRY – MARKET SETTING



Australian households spend an average of \$94 per week eating out

equating to **\$45 BILLION** per year



Australians eat out an average of two to three times per week



As at 30 June 2016, there were

81,991

eating out establishments



Wages the fourth-highest concern when it comes to staffing challenges



The Hospitality industry employs over **830,000** workers in Australia,

in **82,000** businesses



with an annual revenue of **\$101.3 BILLION**



FINDINGS



**243 AUDITS
FINALISED**



72% of businesses non-compliant



63 FORMAL CAUTIONS ISSUED



71 INFRINGEMENT NOTICES ISSUED



7 COMPLIANCE NOTICES ISSUED



1 LITIGATION FILED



\$471,904

was recovered for 616 employees



103 AUDITS
FINALISED

67 AUDITS
FINALISED

73 AUDITS
FINALISED



81%
non-compliant



70%
non-compliant



60%
non-compliant

MOST COMMON BREACH:



WAGES: UNDERPAYMENT OF HOURLY RATE

41%

38%

33%



\$218,838
was recovered for 260
employees



\$188,125
was recovered for 176
employees



\$64,941
was recovered for 180
employees



1 LITIGATION FILED



2 COMPLIANCE NOTICES ISSUED



1 COMPLIANCE NOTICE ISSUED



4 COMPLIANCE NOTICES ISSUED



18 FORMAL CAUTIONS ISSUED



7 FORMAL CAUTIONS ISSUED



38 FORMAL CAUTIONS ISSUED



20 INFRINGEMENT NOTICES ISSUED



21 INFRINGEMENT NOTICES ISSUED



30 INFRINGEMENT NOTICES ISSUED

Executive summary

As part of an ongoing program of intelligence-led work in the hospitality industry, the Fair Work Ombudsman (FWO) undertook three ‘blitz-style’ activities focused on food precincts in the following areas:

- Victoria (VIC) - Victoria Street, Richmond
- New South Wales (NSW) - Glebe Point Road
- Queensland (QLD) - Fortitude Valley.

Each of these precincts is an established ‘cheap-eat’ destination where businesses are often (but not exclusively) seven-day operations. The FWO had concerns about high rates of labour turnover, readily accessible (and often vulnerable) workforces, and menu prices that appeared to be ‘too good to be true’, creating a potential environment of systemic non-compliance. Informed by FWO data and analysis, including intelligence and information from the community, each activity commenced with unannounced visits - due to the types of non-compliance suspected.

The hospitality industry, and particularly food precincts, are prone to significant non-compliance with workplace relations laws and the industry is a key focus of the FWO’s compliance operations. Despite the hospitality industry only making up around 7% of Australia’s workforce, it accounted for the highest number (17%) of disputes the FWO assisted with, in 2016-17¹.

In the 2017-18 financial year (FY) to date, the industry also accounted for:

- 40% of the anonymous reports received
- 18% of the disputes completed
- almost \$3.5 million in recoveries
- 13 litigations filed – with penalties of over \$1.685 million.

Over the same period (2017-18 FY), the industry has featured significantly in the FWO’s enforcement outcomes with hospitality employers accounting for around:

- 31% of litigation penalties awarded
- 25% of Enforceable Undertakings signed
- 32% of Compliance Notices issued.

¹ <https://www.fairwork.gov.au/annual-reports/annual-report-2016-17/02-fwo-performance-report/compliance-priorities/hospitality-industry>

Results from the three recent food precinct activities show very high levels of non-compliance, with nearly three-quarters (72%) of businesses in breach of workplace laws. Breaking this down further:

Victoria Street, Richmond, Victoria

- 103 audits finalised
- 81% of businesses non-compliant with workplace laws
- \$218 838 recovered for 260 employees
- four Compliance Notices, 38 Formal Cautions and 30 Infringement Notices issued
- one litigation commenced.

Glebe Point Road, Glebe, New South Wales

- 67 audits finalised
- 70% of businesses non-compliant with workplace laws
- \$188 125 recovered for 176 employees
- two Compliance Notices, 18 Formal Cautions and 20 Infringement Notices issued.

Fortitude Valley, Brisbane, Queensland

- 73 audits finalised
- 60% of businesses non-compliant with workplace laws
- \$64 941 recovered for 180 employees
- one Compliance Notice, 7 Formal Cautions and 21 Infringement Notices issued.

The FWO has recovered **\$471 904 for 616 workers** in these activities, and has taken strong compliance and enforcement action against 58% of businesses found to be non-compliant as part of these campaigns.

The FWO is also committed to taking the most serious cases of non-compliance to court to seek further penalties.

The results lead the FWO to conclude that businesses operating in high-density hospitality precincts may be adopting non-compliant practices to remain competitive. They also demonstrate why combatting industry non-compliance must necessarily involve changing the behaviour, influence and mindset of those who operate at the top of a service network or business group.

The FWO is committed to improving compliance rates in the hospitality industry by educating the community and workplace participants about their rights and obligations and the FWO's role in taking strong enforcement action where needed to deter further non-compliance.

The FWO will work with industry stakeholders as part of its strategy to improve compliance levels, during the 2018-19 FY and beyond.

Market setting

The hospitality industry employs over 830 000 workers in Australia across more than 82 000 businesses, with an annual revenue of \$101.3 billion across the Accommodation and Food and Beverage Services sectors².

The majority of eating venues in Australia (in ascending order) are fast food, restaurants, cafes, pubs, bars and clubs³. The FWO's food precincts campaign primarily focused on venues in the Food and Beverage Services sector, encompassing the following industry classes⁴:

- cafes and restaurants
- takeaway food services
- pubs, taverns and bars.

There has been solid revenue growth across the food and beverages industry over the past five years. This is largely due to changing consumer trends, such as busy lifestyles, diminishing leisure-time and demand for quality food and dining experiences. The average Australian now eats out two to three times per week⁵. Price and quality are the primary areas of competition, as highlighted by a majority of consumer reviews on social media⁶.

Labour costs represent a significant cost for businesses in the hospitality industry. It's estimated that labour costs account for 23%-31% of running costs for a restaurant with a turnover of \$500 000 to \$2 000 000 per annum, while rent accounts for 9%-14%. Takeaway businesses with a turnover of \$200 000 to \$600 000 have labour costs of 13-22%, with rent accounting for 11%-19%⁷.

Other costs of operating a business can include:

- registrations
- rental lease costs
- licences and permits
- membership fees
- utilities
- insurance.

² IBISworld – Accommodation and Food Services – Australia – Market Research Report - <https://www.ibisworld.com.au/industry-trends/market-research-reports/accommodation-food-services/>

³ Eating out in Australia 2017, Hospitality Magazine http://www.the-drop.com.au/wp-content/uploads/2016/11/EatingOutinAustralia_2017_Respondent-Summary.compressed.pdf

⁴ ANSZIC Industry Classes: <http://www.abs.gov.au/ausstats/abs@.nsf/mf/1292.0>

⁵ Eating out in Australia 2017, Hospitality Magazine ⁵ <https://subscriptions.intermedia.com.au/product/eating-out-in-australia-2017-report/>

⁶ IBISworld – Industry Report - H4511a Restaurants in Australia, March 2018

⁷ [Accommodation and food, Australian Taxation Office, Labour and Rent to Turnover 2015-2016](#)

Table 1: Restaurant Industry – Sector vs industry costs⁸

Percentage of Revenue	Profit	Rent	Utilities	Depreciation	Other	Wages	Purchases
Average costs of all industries in sector (2017-18)	6.9%	8.4%	3.0%	3.9%	19.4%	25.5%	32.9%
Industry Costs (2017-18)	4.0%	9.0%	3.6%	2.9%	12.3%	34.2%	34%

Table 2. Fast Food Industry – Sector vs industry costs⁹

Percentage of Revenue	Profit	Rent	Utilities	Depreciation	Other	Wages	Purchases
Average costs of all industries in sector (2017-18)	7.0%	8.4%	3.0%	3.9%	19.0%	25.5%	33.2%
Industry Costs (2017-18)	8.4%	13.8%	2.9%	3.9%	12.4%	15.7%	42.9%

Increase in lease expenditure is also taking a toll, as business owners across the country face a significant increase in costs¹⁰ growing at a significantly higher rate than the Consumer Price Index¹¹. This is on top of energy prices, with evidence indicating that smaller businesses have been subject to higher energy cost increases than their residential and big business counterparts¹².

It's also common for restaurants, bars and fast food businesses to trade outside of 'standard business hours', which means penalty rates can apply, causing an increase in labour costs.

The most common allegations the FWO received from workers in the food and beverage industry from July 2015 to June 2017 were:

- Wages – underpayment of hourly rate (32.3%)

⁸ [IBISWorld](#) Industry Report – H511a – Restaurants in Australia- accessed March 2018

⁹ [IBISWorld](#) Industry Report – H4512 – Fast Food and Food Services in Australia – accessed December 2017

¹⁰ <http://www.colliers.com.au/~media/Australia%20Website/Files/Research/Retail/2017%20H2%20Retail%20RFR%20Nov17.ashx>

¹¹ [ABS Consumer Price Index Data](#)

¹² <http://www.asbfeo.gov.au/news/news-articles/small-business-sector-slugged-rising-power-prices>

■ Wages – not paid for time worked (19.0%)¹³.

The food and beverage services industry is comprised of a large proportion of young workers aged between 15 to 24 years; 47% compared with 15% for employment as a whole¹⁴.

Hiring younger employees is an attractive option for business as it reduces wage costs due to the lower award wages for younger age groups¹⁵.

The Fair Work Ombudsman considers young workers to be a vulnerable cohort in the workplace. First-time job seekers in particular may not be aware of their minimum entitlements or workplace rights. Another common driver of behaviour is a motivation to gain work experience and concerns about jeopardising their job if they query entitlements or seek help. The impact of these factors may be amplified for casual and/or unskilled workers, who may be concerned about losing shifts or encountering challenges finding alternative work.

In the 2016-2017 financial year, 49% of disputes involving a workplace dispute received from the food and beverage services industry related to young workers¹⁶, compared to 28% of FWO disputes completed across all industries¹⁷.

Rising immigration and greater amounts of overseas travel have transformed the food and beverage industry over the past two decades, sparking strong growth in the variety of dining options available in Australia¹⁸. These factors have resulted in a higher prevalence of Culturally and Linguistically Diverse (CALD) migrant workers employed within the industry. Over 36% of workers employed in the food and beverage services industry were born outside of Australia, compared with 30.4% of employees generally¹⁹. Of those born overseas, a large proportion were born in Southern Asia - 6.2% compared with 4.3% for employment as a whole²⁰.

Due to cultural and language barriers, migrant workers often fall into the vulnerable worker category. This is particularly the case in the food and beverage industry, where in the 2016-17 financial year FWO has seen 31.6% of completed disputes from visa holders²¹; notably higher than the 18% for all FWO completed disputes in same year²².

The most commonly identified visa types held by workers were:

¹³ Calculated from disputes completed by FWO from July 2015 to June 2017

¹⁴ Australian Bureau of Statistics 2016, *Census (2016)*, TableBuilder. Findings based on use of ABS TableBuilder data.

¹⁵ IBISworld Industry Report H4512 – Fast Food and Food Services in Australia, December 2017

¹⁶ Calculated from disputes where the relevant data (demographic or otherwise) has been recorded. Detailed demographic data is not available for all disputes.

¹⁷ Ibid

¹⁸ IBISworld – Industry Report - H4511a Restaurants in Australia, March 2018

¹⁹ Australian Bureau of Statistics 2016, *Census (2016)*, TableBuilder. Findings based on use of ABS TableBuilder data.

²⁰ Ibid

²¹ Calculated from disputes where the relevant data (demographic or otherwise) has been recorded. Detailed demographic data is not available for all disputes.

²² Ibid.

- Working Holiday Visa 417 (174)
- Other Visa (149)
- International Student Visa 500 (64)
- Migrant Worker (Skilled) 457 Visa (54).

Competition within the food and beverage services industry can be particularly strong in inner-city locations where businesses owners are looking to capitalise on passing foot traffic²³. Business spaces in areas with high average incomes are also in demand as people within these areas have more disposable income to spend on eating out. The targeted areas of Richmond, Glebe and Fortitude Valley have all reported household incomes higher than the national median.

Table 3. Median weekly household income²⁴

Area	Median weekly household income
Richmond	\$2,015
Glebe	\$1,814
Fortitude Valley	\$1,592
National	\$1,438

The higher household income and convenient inner-city location of these areas makes these suburbs attractive places for food retail businesses to set up operations.

There's also an increased likelihood that employees in these geographic areas will present as vulnerable. Workers in these locations are more likely to be migrant workers, as the percentage of residents in these suburbs born overseas is higher than the national average. The median age of residents is also lower than the national median, which means that employees in these areas are more likely to be young workers.

²³ IBISworld – Industry Report - H4511a Restaurants in Australia, March 2018

²⁴ ABS 2016 - <http://www.abs.gov.au/websitedbs/D3310114.nsf/Home/census>

Table 4. Median age of residents²⁵

Area	% of residents born overseas	Median age
Richmond	39.2%	33
Glebe	48.3%	33
Fortitude Valley	53.2%	31
National	33.3%	38

The FWO has also found that cafes, restaurants and takeaway services consistently rank in the top three industries for disputes completed for Richmond (1st), Glebe (2nd) and Fortitude Valley (1st), over the last five years²⁶.

²⁵ ABS 2016 - <http://www.abs.gov.au/websitedbs/D3310114.nsf/Home/census>

²⁶ Calculated from disputes where the relevant data (demographic or otherwise) has been recorded. Detailed demographic data is not available for all disputes.

Market Structure - Workplace relations settings

There are three main awards covering the majority of employees in cafes and restaurants in Australia.

- [Restaurant Industry Award 2010](#)

Covers cafés and restaurants that mainly provide a sit down and table service.

- [Fast Food Industry Award 2010](#)

Covers cafés and restaurants that sell food, coffee and other packaged items for customers to take away, mostly.

- [Hospitality Industry Award \(General\) Award 2010](#)

Covers restaurants and cafés that are part of a hotel or resort.

In addition, the [Registered and Licensed Clubs Award 2010](#) covers a restaurant or bistro that is part of a licensed club.

As at the time of publication of this report, the minimum wage for an adult working in a café or restaurant during the day is \$19.53 per hour and \$24.41 per hour for a casual employee.

The FWO recognises that it can be difficult to decide on the relevant award in some circumstances. For example, a restaurant with more takeaway business during the day and more sit down customers at night may believe more than one award is appropriate. The FWO recommends customers contact us, or their relevant employer association or union for assistance and advice if they're unsure about award coverage.

Higher rates, such as penalty rates, also apply for work performed outside of ordinary hours such as nights and weekends.

The Fair Work Commission (FWC) has made changes to the Hospitality, Restaurant and Fast Food Awards. These changes, effective from 1 July 2017, included reducing public holiday penalty rates and some Sunday and evening penalty rates. Further changes, effective from 1 January 2018, were made to certain overtime rates and minimum shift entitlements for casual and part-time employees. Information regarding these changes is available on our website.

The FWC is currently reviewing these awards as part of its ongoing Modern Award Review.

Food precinct activities 2016-17

The FWO selected the locations for its food precincts activities based on a number of factors:

- Meal costs do not appear to have risen proportionately with restaurant prices in comparable restaurant precincts.
- Many food precinct businesses are open late, and operate seven days a week, leading to potential for significant underpayment of evening and weekend penalty rates.
- Intelligence received about businesses in these areas, indicating unlawful workplace practices and the potential for serious, widespread non-compliance.
- High numbers of readily available and/or transient workers, and the predominantly CALD profile of the precincts, with a majority of businesses staffed by young and/or migrant workers.

The FWO made unannounced site visits to enable Inspectors to elicit evidence through:

- interviews with staff on site
- observation, including the number of staff on at the time of the visit
- sighting records at the business or determining that no records were available after interviewing staff, resulting in easier identification of potential falsified records.

While each precinct differs in character and demographic, they share a number of characteristics, including their popularity as high-density, inexpensive dining destinations and CALD population profiles:

- Victoria Street is a retail and restaurant precinct popular for predominantly Asian (Vietnamese) food and grocery stores to cater to the local population.
- Glebe Point Road and Fortitude Valley offer a variety of international eateries and bars.
- Fortitude Valley is well known for its nightclubs and nightlife and is a particularly popular nightspot for backpackers and travellers.

Some common trends were identified during the campaign relating to record-keeping and wages.

Record keeping

- No records or inadequate records
- No pay slips
- Incomplete work records e.g. names of staff members recorded against a day of the week but without start and finish times
- Interchanging names of workers e.g. using a workers English name on rosters, which is not the real name of the worker. This made it difficult for Inspectors to correlate the individual with other records using the worker's real name.

- Employers communicating with staff via phone, SMS and smartphone applications for group communication and to advise shifts instead of making formal rosters and keeping records.

Wages

- Cash in hand payments
- Flat rates of pay
- Workers paid based on employers' memory of hours worked
- Wages paid inconsistently e.g. sometimes into workers' bank accounts, sometimes in cash
- Accountants handling wages matters and providing advice inconsistent with workplace laws.

Education session: Victoria Street, Melbourne

Following the audits, FWO officers presented an education session at Otao Kitchen (run by Mr. Ha Nguyen, Secretary of the Victoria Street Business Association) to around 25 employers in the restaurant industry. These employers mainly employed family members.

Attendees were very interested to receive information about their obligations and notification the FWO would likely undertake future audit activity in the area/street.

At the session, FWO officers provided information on the national minimum wage and explained that the relevant award rates are higher than the minimum rate, and that they are obliged to pay penalty rates and other conditions to meet minimums for their staff.

In response to a question, FWO officers explained junior rates and provided examples of how to calculate entitlements using the appropriate rate of pay in the relevant award.

The FWO officers gave a live demonstration of FWO's Pay and Conditions Tool (PACT) on a mobile phone. Some attendees joined in and tried the app. As well as using PACT, they were encouraged to create a My account to receive alerts of further minimum wage increases.

Objectives

The objectives of the campaign were to:

- increase awareness among employers operating in the precincts about the role of the FWO and assistance we offer (including tools and resources available through the FWO website and Infoline)
- test and detect compliance with Australian workplace laws - specifically time and wages matters
- assist employers to understand and resolve employment issues as they relate to the hospitality industry
- use appropriate compliance and enforcement tools for non-compliant businesses, including litigation
- develop our understanding of the drivers of non-compliance.

Results

The majority of businesses audited were cafes and restaurants. Some fast food establishments were also included.

Of the three areas visited, Melbourne's Victoria Street had the highest degree of non-compliance with an 81% non-compliance rate.

Of the 243 audits completed **across all three precincts** during the campaign:

- 174 (72%) were non-compliant
- 69 (28%) businesses were compliant with all requirements
- 57 (23%) businesses were subject to enforcement action as a result of non-compliance
- 44 (18%) businesses were issued a Formal Caution as a result of non-compliance
- \$471 904 was recovered for 616 employees from 102 businesses.

The most common breaches were:

- Wages – underpayment of hourly rate (38%)
- Payslips – failure to provide payslip in prescribed form (17%)
- Payslips – failure to provide payslip in required time (11%).

Across the campaign, there was a 54% monetary breach rate and a 40% non-monetary breach rate.

Victoria Street Café

Fair Work Inspectors audited a café on Victoria Street and found non-compliance with wage rates. Although time and wage records were being maintained, casual staff were being paid flat rates of pay without penalty rates or overtime. Some staff were also working well above the 38 ordinary hours each week.

The audit disclosed the owner had moved to Australia three years prior to the compliance activity. She had bought the business with her parents, having previously operated a café in Vietnam, and had limited exposure to Australia's workplace regulations prior to purchasing the business.

The owners said that they had only heard of 'Fair Work' in passing conversations with their accountant and were not clear of its role.

Fair Work Inspectors explained and demonstrated to the owner the suite of resources available on the FWO website, to help them understand and comply with the appropriate workplace laws.

Compliance and enforcement actions

Addressing non-compliance is a priority for the FWO. The FWO has responded to the high levels of non-compliance identified in these activities by taking a wide range of compliance and enforcement actions against many of the businesses found to have been in breach of workplace laws, including litigation.

Of the **174 businesses** Fair Work Inspectors identified as non-compliant during these activities, **142** were subject to FWO's compliance and enforcement tools. In several matters, employers were also subject to the use of the multiple tools as Fair Work Inspectors identified serious, wide-ranging non-compliance with workplace laws encompassing both monetary and non-monetary obligations.

Compliance and enforcement actions taken by the FWO included:

- 63 Formal Cautions issued
- 71 Infringement Notices (on-the-spot fines), with penalties totalling \$47,480
- seven Compliance Notices issued, recovering \$69,525 for 48 employees
- one litigation filed.

Formal Caution

The FWO issues Formal Cautions when it finds instances of non-compliance and considers it 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.

Formal Caution – Victoria Street restaurant

Fair Work Inspectors visited a restaurant in Victoria Street, Richmond and found that the kitchen and wait staff appeared to have been underpaid their hourly rate.

Upon closer examination, Fair Work Inspectors determined that the error had come about from paying under the wrong classification level detailed in the Restaurant Industry Award 2010. The employer accepted their mistake and made corrections to the employees' wages, and back-paid the underpayments in full.

The Fair Work Inspector decided to issue a Formal Caution, putting the employer on notice that any further non-compliance could result in a higher level of enforcement.

Infringement Notice

An Infringement Notice is a fine given to a business for non-compliance with record-keeping or pay slip requirements of the Fair Work Act 2009 (the Act).

Infringement Notice - Glebe café

Fair Work Inspectors visited a cafe in Glebe. An assessment of time and wages records found two casual employees were receiving below minimum award wage flat rates of pay.

The employer advised that pay slips were provided to employees only at their request, or not at all. The employer also stated that there was an agreement in place in relation to wages whereby non-payment of weekend penalty rates was compensated by provision of food or drink; an arrangement not permitted by the Act.

The owner was required to back-pay staff and provide evidence of applying the correct rates of pay from the modern award. Additionally, Inspectors issued an Infringement Notice for \$900 for not providing pay slips to employees.

The business will be re-audited to ensure future compliance with all applicable rates of pay, as well as pay slip and record-keeping obligations.

Compliance Notice

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.

Compliance Notice – Fortitude Valley

An audit of an employer operating a restaurant located in Brisbane's Fortitude Valley disclosed a number of casual employees were being paid less than the minimum rates under the Restaurant Industry Award 2010.

Fair Work Inspectors identified that during the assessment period seven employees were misclassified as Level 1 employees when they were performing the duties of Level 2 employees under the Award. This resulted in underpayment of ordinary hours of work, weekend work and late evenings. The employees were underpaid a combined total of just over \$3992.

The FWO determined it appropriate to issue the employer with a Compliance Notice to address the breaches and recover the outstanding back pay. The employer rectified the underpayment in accordance with the requirements of the notice and was warned of the consequences of continuing non-compliant behaviours.

Litigation

The FWO commenced legal proceedings against a business due to the seriousness of the non-compliance. Litigation is a legal process where the FWO files against a company and/or individual in a court of law, seeking financial penalties against the employers for allegedly breaching the Act. Litigation is the most significant enforcement tool used by FWO and is reserved for those serious matters that are in the public interest as detailed in the [FWO Litigation Policy](#).

Litigation - Meatball & Wine Bar Pty Ltd

In 2017, the FWO filed [legal action against the Meatball & Wine Bar Pty Ltd](#), following significant non-compliance found during an audit of the business. The findings allege the company underpaid 26 employees \$14 149.83 over a three-month period; despite the employer previously being advised, through a third party advisor, of the correct rates of pay.

The FWO alleges that the workers, including ten visa holders, were receiving flat rates of pay between \$17.31 and \$21.69, despite working weekends and evenings.

Other allegations include seven of the employees being paid a flat rate that was below the national minimum wage, twenty workers not being paid casual loadings, and others not receiving overtime rates.

Location-specific results

The key results across the three precincts are summarised below.

Victoria Street, Richmond, Victoria

103 audits finalised:

- 83 (81%) non-compliant
- 20 (19%) businesses compliant with all requirements.

Compliance and enforcement outcomes:

- one litigation filed
- four Compliance Notices issued
- 38 Formal Cautions issued
- 30 Infringement Notices issued.

\$218 838 recovered for 260 employees from 48 businesses.

A total of 136 breaches were identified. Of those the top three breaches were:

- Wages – underpayment of hourly rate (41%)
- Payslips – failure to provide payslip in prescribed form (19%)
- Payslips – failure to provide payslip in required time (10%).

Glebe Point Road, Glebe, New South Wales

67 audits finalised:

- 47 (70%) non-compliant
- 20 (30%) businesses compliant with all requirements.

Compliance and enforcement outcomes:

- 20 Infringement Notices issued
- 18 Formal Cautions issued
- two Compliance Notices issued.

\$188 125 recovered for 176 employees from 29 businesses.

A total of 90 breaches were identified. Of those, the top three breaches were:

- Wages – underpayment of hourly rate (38%)
- Payslips – failure to provide payslip in prescribed form (17%)
- Payslips – failure to provide payslip in required time (14%).

Fortitude Valley, Queensland

73 audits finalised:

- 44 (60%) non-compliant
- 29 (40%) businesses compliant with all requirements.

Compliance and enforcement outcomes:

- 21 Infringement Notices issued
- seven Formal Cautions issued
- one Compliance Notice issued.

\$64 941 recovered for 180 employees from 25 businesses.

A total of 76 breaches were identified. Of those, the top three breaches were:

- Wages – underpayment of hourly rate (33%)
- Payslips – failure to provide payslip in prescribed form (14%)
- Penalties – weekend (12%).

Overall, the activities found that Victoria Street, Melbourne had the highest levels of non-compliance. At 81%, the rate is 34% higher than the breach rate across all audits (47% in 2016-17). As a result, the compliance and enforcement response taken by the FWO was also proportionately higher in this location.

Insights

The compliance activities involving these three precincts provided the FWO with valuable insight into the barriers to compliance, including the following:

- age
- language
- complexity of system
- low level awareness of where to get help to understand the system
- industry norms
- reliance on an non-specialist accountants.

During the audits Fair Work Inspectors noted the following examples of business practises relating to accountants:

- Employer claimed no awareness of the FWO and accountant does 'all of this' for them and that we should speak to them about it.
- Employer stating they had records of payments, but that these were with their accountant.
- Employer claimed their accountant gave them a 'pay range' to pay employees.
- Employer calls accountant daily to advise employee hours worked and keeps no records, rosters or pay slips on site.
- Accountant informed employer of 'Fair Work' obligations.
- Employer had heard of the FWO but isn't 100% across obligations.
- Not a member of an association and not aware of 'Fair Work'.

Fair Work Inspectors also noted a suggestion that the age of the workplace participant could influence their pathways to finding information on workplace laws.

Many younger employees (in their 20s) said they are comfortable getting information from FWO, either from the website or over the phone, as their English is good (mainly university students). However, older employees preferred to use interpretive services or read in their native languages.

Fair Work Inspectors reported reluctance on behalf of some employees to talk to Inspectors and fear of potential consequences if they did.

An employee working in a small pizza franchise with a young baby and wife not in employment, feared raising issues with the employer as he believed he may lose his job. He advised that in his last job if anyone complained about the hourly rate (which they knew was not right) they were fired and there is always someone else who is desperate for work who will take the job so there was no point complaining. He said he took one day off for the birth of his child but would be scared to ask for more.

These insights assist to explain the potential drivers of non-compliance and will assist the FWO in designing future education, communication and compliance activities strategies.

Communications, Engagements and Media Coverage

Stakeholder Engagement

As each of the activities involved unannounced site visits, there was limited pre-audit engagement with stakeholders.

Stakeholder engagement involved contacting the relevant local councils:

- Victoria Street - City of Yarra and City of Melbourne
- Glebe Point Road - City of Sydney Council
- Fortitude Valley - Brisbane City Council.

The FWO also contacted the Restaurant and Catering Industry Association of Australia prior to each of the above activities.

Conclusion

Since its inception, the FWO has conducted various compliance activities involving the hospitality industry.

The findings of these activities over the course of a decade have disclosed a culture of non-compliance in the hospitality industry, which enables many businesses to hold an unfair competitive advantage.

The lack of records kept and maintained by employers has often provided a barrier to FWO's compliance objectives in these three sectors. The introduction of the new provisions in the Protecting Vulnerable Workers Act provide tougher penalties for those employers failing to maintain and keep adequate records.

The FWO acknowledges the challenges faced by those new to the Australian workplace relations system and provides a range of free in-language services to support workplace participants to be compliant. It is imperative that employers do not ignore their workplace relations obligations, as paying staff the minimum rates is non-negotiable and a key element to lawfully operating a business.

The overall non-compliance level of 72% found during the activities outlined in this report is very high, as is the overall monetary recovery of more than \$470 000. The seriousness of the non-compliance resulted in the significant use of the FWO's compliance and enforcement tools:

- one litigation filed
- 71 Infringement Notices (on-the-spot fines), with penalties totalling \$47,480
- 63 Formal Cautions were issued
- seven Compliance Notices issued recovering \$69,525 for 48 employees.

The FWO is committed to increasing its focus on the fast food, restaurants and cafes sectors through a coordinated and targeted program of information, education, communication and compliance activities.

The FWO acknowledges that a broader approach - one which includes the input of industry and the community - is required. Over the course of the next twelve months, the FWO will work closely with the community, stakeholders and all levels of government to deliver genuine improvements in the industry.