

**Address by Natalie James,
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How can we build a Culture of Compliance in the hospitality industry?

Good morning, and thank you for having me here today.

Firstly, I would like to respectfully acknowledge the Gadigal people of the Eora Nation who are the traditional owners and custodians of the land on which we meet.

I would also like to pay respect to the elders past, present and future of the Gadigal people and extend that respect to other Aboriginal and Torres Strait Islander people here today.

MOST EMPLOYERS WANT TO DO THE RIGHT THING

Since I was appointed Fair Work Ombudsman just over a year ago, I have found myself standing in front of audiences like yourselves at a number of conferences.

And I often start off by saying: "We at the Fair Work Ombudsman know that most employers want to do the right thing".

I am confident making that statement to this audience!

You are members of an employer organisation.

You go to some effort to inform yourselves of your obligations and to comply with them.

It is also generally true of those employers who approach us.

Those among the half a million people who call our Infoline each year, or the 11 million people who visit our website.

Employers who come to the Fair Work Ombudsman, by and large, want to do the right thing.

They want to understand what they need to do to comply with their obligations.

It's not always easy.

Some struggle with the complexity of the system.

We know these people well.

Our Infoline Advisers spend every day talking to well-intended people who struggle through awards and statutory entitlements trying to work out what they should be doing.

And it's our job to make it easy for them to do the right thing ...

... through our Small Business Helpline, which will be a year old in December and has taken around 130,000 calls ...

... or via our recently re-designed website, which makes it easy to find what you need and save that information so you can refer back to it ...

... helping people by continuously improving our online pay tools – making it easier to work out rates of pay for yourself.

And also through our involvement in the Modern Award Review.

We are working with the Fair Work Commission to make awards simpler for ordinary business people to understand and apply.

Members of employer organisations are generally well aware of their award obligations.

They have the benefit of expert advice from their industry specialists who have been intimately involved in their award over many years ...

... as it has evolved under different legislative frameworks – from when it began in settlement of an age-old industrial dispute ...

... through variations over the years, through award simplification, transitions, and, more recently modernisation under the current Fair Work framework.

Not every employer is so well advised.

We encourage membership of employer organisations.

We know that, with the benefit of their expert advice, businesses are more likely to be compliant.

We promote membership through our new website, with a dedicated page that links people to the relevant employer organisation in their industry.

The Fair Work Ombudsman has a special relationship with the AHA.

We have been working in partnership with the AHA for a number of years now.

This year, we signed a further¹ three-year Memorandum of Understanding to continue our strong relationship.

Through this MOU, the AHA has made a pact with FWO that workplace compliance is a priority.

The AHA has also worked in partnership with us on initiatives like our National Hospitality Campaign, particularly in the first 'Wave' of the campaign where we audited businesses in your sector.

The AHA *can see* the productivity gains for its members through these partnerships.

But not everyone is like you.

Particularly in the hospitality sector more broadly.

HOSPITALITY – COMPLIANCE, CULTURE AND REPUTATION

So let's talk about this important Australian industry.

The hospitality industry makes a significant contribution to the Australian economy – around \$35 billion annually.

It provides employment opportunities for around 750,000 people across both regional Australia and city centres.

¹ Please note this is the second MOU we have signed as the Fair Work Ombudsman. A third was signed in 2007 with the Workplace Ombudsman.

Most people in Australia are connected to the hospitality industry in some way ... whether it is because they have worked in it, know someone who has, or as a customer.

So much of our social fabric revolves around eating, drinking and holidaying together.

And as much as we all aspire to be Master Chefs, we also quite like to be relieved of the shopping, prep and cleaning up.

We love an after-work bevy or a Sunday session to roll us into the working week.

About 43 per cent of employees in the hospitality industry are young workers, aged between 15 and 24.²

And many of these workers are students – around one third are either studying full-time or part-time.³

Young workers do tend to be more vulnerable – less knowledgeable of their entitlements and less confident when it comes to raising concerns.

This is why we have a dedicated team of Inspectors who deal with complaints that come from young workers.

From the Fair Work Ombudsman's perspective, hospitality is an important industry, but not always for all the right reasons.

I'm not so confident that everyone in the hospitality sector wants to do the right thing.

In 2013-14, the Fair Work Ombudsman received nearly 25, 000 complaints.

Just over one in 10 (11 per cent) of them were from the hospitality industry.

In fact, the hospitality industry is consistently our top-ranked sector for complaints.

This is one of the reasons why we initiated a National Hospitality Campaign.

² Employment outlook for accommodation and food services, Department of Employment, December 2013

³ Employment outlook for accommodation and food services, Department of Employment, December 2013

Let's talk about the results of Wave One of this campaign – which focussed on pubs, taverns, bars and accommodation.

It showed that 69 per cent of employers in your sector were meeting their responsibilities, while 31 per cent were asked to fix errors.

Of the 235 breaches we found, almost two thirds (147, or 63 per cent) related to monetary contraventions, and the remainder (88, or 37 per cent) related to record-keeping and pay slip issues.⁴

The 69 per cent compliance rate is marginally higher than the average compliance rate that we found in 2013-14, which was 62 per cent.

The results of Wave 2 – which looked at restaurants, cafes and catering businesses – and Wave 3 – which focussed on the fast food sector – will be ready soon.

The audit phase is complete, and we're finalising the reports. And we'll share the results with you once they're published.

Returning to our complaints figures – let's break down that 11 per cent ... that is 2602 hospitality complaints.

The pubs, taverns and bars sector represents around 9 per cent (227) of all hospitality complaints and the accommodation sector almost 11.5 per cent (299).

The biggest source of hospitality complaints is the restaurants and fast food sectors.

Combined, they account for around three quarters (almost 76 per cent or 1973 complaints) of all complaints received, with the remainder coming from the clubs sector (4 per cent or 103).

On the basis of the complaints and campaign numbers, your part of the sector is looking relatively compliant.

That's a good start.

⁴ Please note that the 63 per cent includes instances where breaches of **both monetary** and **non-monetary** were found.

But of course the number of complaints is not the only thing we look at.

Many people who are the subject of complaints are trying to comply, but don't quite manage to get it entirely right.

Most employers work with us to fix the problem.

Let's look at the pointy end of our work – litigations.

Most of the matters we put into court each year involve employers who do not want to do the right thing.

At least not before considerable pressure has been applied through enforcement action.

They are usually employers who have been given plenty of chances ... advice, warnings, Letters of Caution ... but who have continued to underpay vulnerable workers.

Often they refuse to co-operate with us when we try and work with them to fix the problem.

Employers like the owner of two La Porchetta restaurants in Melbourne where we found 111 employees – mostly teenagers – had been underpaid \$258,000.

We had previously required this employer to correct mistakes with his workers.

This employer had been warned by our Inspectors.

He continued to underpay workers, including trainees in respect of whom he received taxpayer-funded grants to train.

He paid flat hourly rates, and asserted that he was "off-setting wages with pizza and soft drink".

The Judge observed, "Such a practice belongs in the dark ages."⁵

⁵ Media release: <http://www.fairwork.gov.au/About-us/news-and-media-releases/2014-media-releases/June-2014/pizza-and-soft-drink>

In addition to being ordered to correct the significant underpayments, the employer was fined \$334,000.

We take a balanced approach to our enforcement responses.

But it is important that there are serious and visible consequences for deliberate breaches of the law.

Otherwise it invites others to break the law.

Last year, we took seven employers in the hospitality industry to court – that's a significant proportion of the total 37 cases.

Four of these businesses were restaurants and three were fast food operators.

None of these cases involved pubs or taverns.

You may be tempted to think... "Well, we're doing the right thing...it's the rest of the industry that needs to lift its game".

It is possible to draw from all this data an inference.

An inference that your part of the sector has, relatively speaking, a better approach to compliance – perhaps a culture more conducive to compliance – than other parts of the hospitality industry.

You and the AHA are to be congratulated in this respect.

You are industry leaders.

The work you do, and the investment you make in ensuring that your industry is at the more compliant end of the spectrum is to be applauded.

And we look to you to help us leverage this culture of compliance – to build it within your sector and to encourage compliant practices throughout the hospitality industry.

A CULTURE OF COMPLIANCE

What might a 'culture of compliance' look like when it comes to workplace laws in Australia?

What does this really mean?

To me it means that complying with the law is the *default*.

It means people don't think twice about whether they should or not.

It means it should be easy to do the right thing – which of course is where we come in.

It means a person who does not comply is frowned upon by others.

Consider the reaction today if you refuse to wear your seat belt (even before our cars started beeping at us) or smoking on a plane or drink-driving.

These behaviours were once accepted and common.

They're not anymore.

What changed?

Clear decisions of Government and strong awareness campaigns backed in with active enforcement by regulators.

Persuasive campaigns that focused on the direct consequences of the behaviour on the individual as well as the impact of the behaviour on others...

When it comes to compliance with workplace laws, it's the 'right thing' to do by your workers.

It's about avoiding practices that result in the Fair Work Ombudsman knocking on your door.

But it's more than that.

It's the broader impact on the industry.

It's reputation.

It's about fairness to the operators in the industry as well as fairness to the workers.

It's not fair to those who DO comply to allow those who don't to continue unhindered

...

... to turn a blind eye.

It's disadvantaging competitors who have taken their obligations seriously.

Only a culture of compliance ensures a level playing field – stopping businesses gaining an unfair advantage by ripping off their staff.

While you are running the same kind of business around the corner and paying the real costs.

We want to create a culture where employers see deliberate non-compliance as bad business.

Building a culture of compliance will pay dividends – improving the reputation of the hospitality industry as a whole.

The poor employment practices of others, even those not in your part of the industry, undermines the industry as a whole.

Reputation is determined by the worst examples – the weakest link.

While you are working hard to do the right thing, some of your colleagues in the sector are not.

We want to make it easy for people who want to comply.

And as for those who don't ...well there should be consequences for them.

Consequences that make compliance inevitable in the long run.

But this won't happen solely by the Fair Work Ombudsman responding to the complaints that come in the door.

Or even through litigation and active promotion of the outcomes of that legal action.

We need to be strategic about our work.

Working with industries and communities to create change that is sustainable.

We are looking to broaden our understanding of what is going on in workplaces, industries and regions.

Beyond what we learn from our own activities – which is significant – but also combining this knowledge with other sources of information.

Taking advantage of data and research.

And intelligence.

Intelligence from those operating in and close to the industry.

We need to know what you know.

One of the most effective ways for the Fair Work Ombudsman to create a culture of compliance is to partner with organisations such as the AHA, and encourage employers to become a member of an employer organisation.

We are also calling on business to partner with us through Compliance Partnerships.

These partnerships are co-operative agreements, not a punitive tool.

They place compliance in the hands of the employer, but enable us to provide guidance and support to ensure employers are able to do the right thing.

This year we have signed Compliance Partnerships with McDonald's, Domino's, La Porchetta, Compass Group and Retail Zoo – which is the parent company of Boost Juice, Salsa Fresh Mex and a few other businesses as well.

In total we have signed eight Compliance Partnerships in the hospitality industry.

None of these partnerships so far have been with businesses in your sector.

I know you want to do the right thing, and your part of the industry is relatively compliant.

But there *are* things you can do to build a culture of compliance in the hospitality industry.

A compliance partnership might be worth considering – to show you are an employer that is serious about doing the right thing by your staff.

To help you attract and retain good workers.

INFORMATION AND INTELLIGENCE FROM INDUSTRY

There are other ways we can work with industry to make the system more compliant.

Sharing your information and intelligence with us is a good start.

Telling us what's going on – from the perspective of a business operating in this industry.

You know the industry better than we do – you know what trends are emerging, what practices are going on, when people are not complying with the law.

I'm sure you have staff that come from other businesses who speak of less than ideal previous work experiences.

It helps us to hear what you hear.

We want to be as informed as we can.

Regulators all over the world are using industry information to plan their compliance work.

The ACCC have implemented practices to encourage information from industry and the community which it gathers, assesses and, if necessary, acts upon.

You might be familiar with their 'Scam Watch' initiative.

At the Fair Work Ombudsman we are also looking to develop ways we can work with partners, including the hospitality industry, to actively invite intelligence from a range of sources – not just through the traditional source of complaints and audits.

Competitors, suppliers, customers – they all have information about businesses that are not doing the right thing by their workers.

About the pressures and incentives operating in an industry.

Some might call it whistleblowing.

However you describe it, it makes sense for us to create an easy pathway to enable people to share what they know.

We will treat the information with respect – and we will take appropriate action.

It will help us, along with data and research, identify trends and consider reasons people choose to not comply – the incentives and structural characteristics in an industry that influence behaviour.

We would not assume that non-compliance is deliberate.

This is generally not our experience.

We might not go and visit that business straight away, but we might use the intelligence to inform our audit campaigns and strategic enforcement activities.

And if we do come across serious cases, we may step in.

Perhaps we can assist that employer to understand their obligations.

If we don't get a good response, a more formal enforcement outcome might be warranted.

This happened recently in another industry where the representative body contacted us directly about an industry participant who wasn't on the level playing field.

This matter is now going to court.

The Fair Work Ombudsman has formal responsibilities to encourage compliance with workplace laws.

But what I am really saying to you today is, consider the benefits that flow to a more compliant industry.

There are good business reasons for industry leaders to encourage businesses to do the right thing.

Could you influence those around you to become members of an employer organisation?

Or are you willing to partner with us through a Compliance Partnership – and send a message to your industry that you take your legal and ethical obligations as an employer seriously.

There might also be things you'd like to see my agency do differently?

And if there are, I would really like to hear about them.

Feedback and information sharing helps my agency gain insight into the issues concerning you, and how we can then assist.

What might seem like a minor trend to you could alert us to a significant emerging issue.

We are *always* keen to learn more.

It helps us ensure our work has a real and positive impact on industry-wide drivers of non-compliance.

And from a practical perspective, it helps us to provide better products and services that support workplaces through the range of situations that arise on a day-to-day basis.

So, if you have something you think is worth us knowing, I invite you contact us directly.

And stay tuned for future developments.

We may soon be actively inviting you, to provide us with intelligence about what is going on in your industry.

Thank you for having me here today – and I'd now like to welcome any questions.