

Textile, Clothing and Footwear Compliance Phase Campaign Report

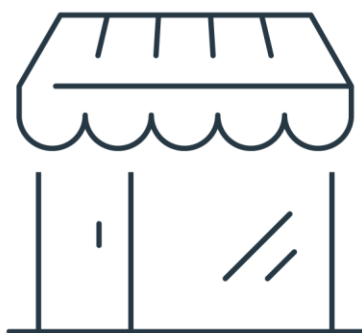
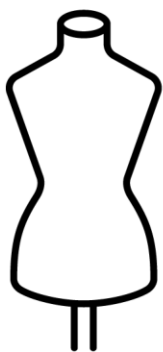
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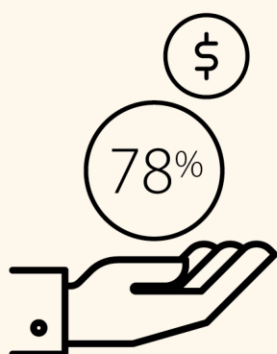
371 businesses audited



52% of businesses
compliant with all
requirements

\$84 846

recovered from **68** businesses
for **138** workers



78% of business
paying workers
correctly



67% of businesses
compliant with
pay slip and
record-keeping
requirements

Compliance and Enforcement Outcomes

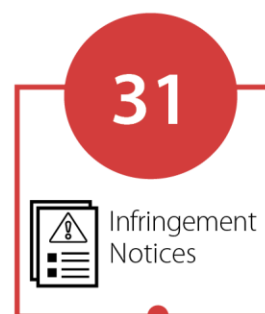


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Executive summary

The FWO conducted the National Textile, Clothing and Footwear (TCF) Campaign in two distinct phases: an education phase that commenced in March 2015, followed by a compliance phase that commenced in June 2016.

The objectives of the education phase were to increase awareness of workplace laws at all levels of labour supply chains (including outworkers) in the TCF industry and encourage the use of free FWO tools and resources. Details of the education phase are discussed in the FWO's *Designed to Fit* campaign report.¹

This report concerns the compliance phase, in which Fair Work Inspectors returned to businesses the FWO interacted with in phase one and identified as appropriate for audit. The FWO found that of the 371 audits conducted during this phase:

- 288 (78%) businesses were paying their employees correctly
- 248 (67%) businesses were compliant with record-keeping and pay slip obligations
- 193 (52%) businesses were compliant with all requirements
- 178 (48%) were in breach of some aspect of their workplace relations obligations, whether monetary, non-monetary, or both.

Fair Work Inspectors recovered a total of \$84 846 from 68 businesses for 138 workers. The majority of breaches were non-monetary in nature: 36% of all breaches concerned record-keeping obligations. Fair Work Inspectors also found:

- 31% of all breaches related to the underpayment of the hourly rate of pay
- 20% of breaches related to the failure of businesses to provide pay slips to workers with the required information or within the required time
- non-compliance relating to penalties, allowances and overtime accounted for 5% of all breaches.

Fair Work Inspectors issued:

- 107 Formal Cautions
- 31 Infringement Notice
- four Compliance Notices.

This report details the second phase of the FWO's TCF Campaign, including the industry settings, findings and outcomes of the activity.

¹ Fair Work Ombudsman 2017, *Designed to Fit: Insights and outcomes from the Fair Work Ombudsman's education phase of the National Textile, Clothing and Footwear Campaign 2015*, viewed 3 January 2019, <https://www.fairwork.gov.au/ArticleDocuments/557/TCF-campaign-report.docx.aspx>

Background

Compliance levels in complex labour supply chains have long been a key area of strategic focus for the FWO.²

The findings the FWO made in the *Queensland Clothing Manufacturing Audit Program 2011-2012 (the Audit Program)* informed the two-phase design of the TCF Campaign.³ These included:

- the difficulty in identifying outworkers in the manufacturing supply chain
- limited record keeping, compounding the risk of worker exploitation
- a lack of familiarity among workplace participants with the outworker-related provisions of the *Textile, Clothing, Footwear and Associated Industries Award 2010* (the TCF Award).⁴

The objectives of the TCF Campaign were to educate workplace participants about their rights and obligations, and to promote compliance with workplace relations laws.

The FWO considers TCF workers are especially vulnerable to exploitation due to:

- a high proportion are mature-aged migrant women, who face cultural and linguistic barriers to understanding and inquiring about their workplace entitlements
- an unverified number are outworkers, who work away from business premises (often at home) at the end of long and complex production supply chains - and are therefore difficult to identify, or 'hidden'
- the pressure on domestic businesses to remain cost-competitive in the context of reduced import tariffs, and increasing competition from overseas manufacturers.

These factors may explain why the TCF sector is under-represented in the number of workplace disputes the FWO has received from workers in the sector.⁵

² The FWO has conducted several Inquiries into the contracting of trolley collection, transport, cleaning and poultry processing services. Reports on the findings are available on the FWO website <https://www.fairwork.gov.au/about-us/access-accountability-and-reporting/inquiry-reports>

³ Fair Work Ombudsman 2013, *Queensland Clothing Manufacturing Audit Program 2011-2012: final report 2013*, viewed 3 January 2019, <https://www.fairwork.gov.au/ArticleDocuments/714/QLD-Clothing-Manufacturers-Audit-Program-2011-report.docx.aspx>

⁴ The provisions are discussed in detail on page 13 of this report. The TCF Award can be accessed on the FWO website at: <http://awardviewer.fwo.gov.au/award/show/MA000017>

⁵ These barriers may be reflected in the relatively low proportion of workplace disputes the FWO has received from the TCF industry during the five-year period July 1 2013-June 30 2018. The FWO received 354 disputes, a lower number when compared with the average for all industries operating within the manufacturing sector (493)

National Textile, Clothing and Footwear (TCF) Campaign - education phase

The Campaign's initial education phase involved extensive consultation with industry stakeholders, employers, workers and community organizations and a dedicated communications campaign that included:

- industry-specific information for employers translated into Chinese and Vietnamese
- translated resources for workers
- in-language radio and print advertising in Chinese & Vietnamese
- social media posts and media statements.

National Textile, Clothing and Footwear (TCF) Campaign - compliance phase

The objective of the second phase was to deliver a compliance activity focussed on businesses that had been educated about their industry-specific obligations in the preceding phase. The activity also targeted additional businesses in supply chains identified in the earlier interactions, and businesses of interest named by stakeholders.

Stakeholder and communication activities

The FWO contacted key stakeholders to advise them that the compliance phase was commencing, and to invite them to identify any additional industry participants for inclusion.⁶ Stakeholders included (but were not limited to):

- Department of Employment
- Department of Immigration and Border Protection
- Australian Taxation Office
- State/territory Work Cover agencies
- Australian Industry Group
- Australian Chamber of Commerce and Industry
- Council of Textile and Fashion Industries Australia
- Textile, Clothing and Footwear Union Australia
- Asian Women At Work
- Immigrant Women's Speak Out
- Working Women's Centre SA/NT/QLD.

⁶ A full list of the stakeholders contacted by FWO (in both phase one and phase two) is provided at Appendix A

Given the extensive nature of the earlier communication campaign, communication activities announcing the commencement of the compliance phase were limited to stakeholder notification and a media release.⁷

The FWO considered several factors when selecting business for audit, including:

- previous interactions with the FWO
- the level of awareness of workplace laws and industry-specific obligations
- the use of outworkers or potential use of outworkers in the labour supply chain
- the risk of non-compliance
- the need for on-site assessment to test the accuracy of the employer's records
- the location of the business.

Methodology

Fair Work Inspectors requested a sample of workers' time and wages records for assessment from target businesses. They assessed business compliance with the requirements of the *Fair Work Act 2009* (the Act), the *Fair Work Regulations 2009* (the Regulations), and the applicable Modern Award. In most cases, this was the TCF Award.

The FWO was able to confirm that 46 of these businesses directly engaged outworkers and identified 109 outworkers at the end of labour supply chains.

Fair Work Inspectors required any business that outsourced work or engaged outworkers to provide evidence of registration with the appropriate **Textile, Clothing, Footwear and Associated Industries Board of Reference** (Board of Reference) as required under Schedule F of the TCF Award.⁸ They also assessed if businesses were compliant with the specific record-keeping provisions of the award.

Depending on the nature of the business and its position in the supply chain, other awards that applied to businesses audited during the TCF Campaign included the:

- *General Retail Industry Award 2010*
- *Commercial Sales Award 2010*
- *Storage Services and Wholesale Award 2010.*

⁷ Fair Work Ombudsman 2016, *Second Phase of TCF Campaign*, media release, 21 July, <https://www.fairwork.gov.au/about-us/news-media-releases/2016-media-releases/july-2016/20160721-textile-campaign-mr>

⁸ Schedule F of the TCF Award establishes Boards of Reference in every capital city (with the exception of Canberra and Darwin). Boards of Reference are usually chaired by the general manager of the Fair Work Commission or their delegate. They also consist of two union, and two business ('principal') representatives. Further information can be found at the FWO Website https://www.fairwork.gov.au/library/k600096_board-of-reference-in-the-textile-and-clothing-award

Market settings

The Australian textile, clothing and footwear (TCF) sector engages over 33 000⁹ workers across more than 6370 (mostly micro) businesses.¹⁰

Businesses are concentrated in the metropolitan areas of Queensland, New South Wales and Victoria.¹¹

The sector is broad and covers many different types of manufacturing, including:

- leather tanning and leather products
- textile products¹²
- knitted products
- clothing (the largest proportion of businesses in the sector¹³)
- footwear.

Businesses in the sector can be involved in any stage of production, from the processing and treatment of raw materials through to the finishing of products for personal, household and industrial use.

The sector

The TCF sector is labour intensive. Operating expenses vary depending on product specialisation, however, as Table 1 below discloses, wages constitute between 15-32% of annual operating costs, and are consistently higher as a proportion of business costs than for manufacturing as a whole.

Since publication of the FWO's Audit Program Report, the TCF sector has undergone further regulatory reform resulting in the need for businesses to adapt to increased competition from new markets. For instance, tariffs on most imported TCF goods currently attract a 5% rate¹⁴ and a number of free trade agreements have removed pricing barriers for overseas manufacturers. Most significantly, the China-

⁹ Australian Bureau of Statistics 2018, *Australian Industry, 2016-17*, 'Manufacturing industry', data cube: cat. no. 8155.0, viewed 2 November 2018, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/8155.02016-17?OpenDocument>

¹⁰ Australian Bureau of Statistics 2018, *Australian Industry, 2016-17*, 'Australian industry by subdivision', data cube: cat. no. 8155.0, viewed 2 November 2018, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/8155.02016-17?OpenDocument>

¹¹ Australian Industry and Skills Committee, 2018, *National Industry Insights – Textile, Clothing and Footwear Industry*, Australian Industry and Skills Committee, viewed 5 November 2018, <https://nationalindustryinsights.aisc.net.au/industries/manufacturing-and-related-services/textiles-clothing-and-footwear>

¹² Australian Bureau of Statistics, 2006, *Australian and New Zealand Standard Industrial Classification (ANZSIC)*, cat. no. 1292.0, viewed 5 November 2018, <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/1582B107BF78B03ACA257B9500133CAF?opendocument>

¹³ Australian Bureau of Statistics, 2018, *Australian Industry, 2016-17*, 'Australian industry by subdivision', data cube: cat. no. 8155.0, viewed 2 November 2018, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/8155.02016-17?OpenDocument>

¹⁴ Department of Home Affairs, 2017, *Combined Australian Customs Tariff Nomenclature and Statistical Classification Tariff Classification of Goods, Schedule 3 – Classification of good and general and special rate of duty*, Department of Home Affairs, viewed 5 November 2018, <https://archive.homeaffairs.gov.au/busi/cargo-support-trade-and-goods/importing-goods/tariff-classification-of-goods/current-tariff-classification/schedule-3>

Australia Free-Trade Agreement has removed all tariffs on the vast majority of clothing made in China¹⁵, which accounts for around two-thirds of imported clothing.¹⁶

Table 1: TCF sector – manufacturing industry v TCF sector costs¹⁷

	Profit	Rent	Utilities	Depreciation	Other ¹⁸	Wages	Purchases
Manufacturing industry	7.6%	1.8%	4.5%	3.3%	8.2%	14.5%	60.1%
Men and boys' wear	4.8%	6.5%	0.3%	1.5%	9.8%	32%	45.1%
Women's and girls' wear	4%	7.5%	1.1%	1.6%	17.9%	22.3%	45.6%
Sleepwear, underwear, infant clothing	5%	6.5%	0.2%	1.6%	25.6%	17.5%	43.6%
Clothing accessories	6.5%	7.3%	1.8%	1.7%	15.8%	21.6%	45.3%
Footwear	10.2%	3.7%	2.6%	2.9%	6%	15.2%	59.4%

In addition to facilitating greater export opportunities, these tariff measures require local businesses to compete with overseas manufacturers for a share of the domestic market. Typically, overseas businesses have lower operating costs and are able to produce lower cost items. To complete, many local businesses have moved part or all of their production offshore, or closed down operations entirely. Online shopping, favouring international products increases the competitive pressure on local business, as does the demand for lower cost single-season and/or 'fast' fashion.¹⁹

Business and employment numbers in the TCF sector declined over the five-year period spanning July 2013 to June 2017. The number of TCF businesses fell by 11%, which was at a higher rate than the manufacturing industry as a whole (6.2%).²⁰ Over the same period, employee numbers in the TCF industry fell by 13% (from 38,000 to 33,088) compared to a 6% decline for the manufacturing industry as a whole.²¹

¹⁵ Department of Foreign Affairs and Trade 2015, *China-Australia Free Trade Agreement, Chapter 2, Annex I: Schedules of Tariff Reduction Commitments of Australia and China*, viewed 7 November 2018, <https://dfat.gov.au/trade/agreements/in-force/chafta/official-documents/Pages/official-documents.aspx>

¹⁶ Although Chinese products dominate the import market, this varies between industry subsectors. For example, in the 2017-2018 financial year, China accounted for 64.6% of men's and boys' wear imports, over 60% of Women's and Girls' wear imports. See: IBISWorld, *Men's and Boys' Wear Manufacturing in Australia Report, 2018 and Women's and Girls' Wear Manufacturing in Australia, 2018*, IBISWorld, viewed 1 November 2018, <https://www.ibisworld.com.au/industry-trends/market-research-reports/manufacturing/textile-leather-clothing-footwear/>

¹⁷ IBISWorld 2018, *Textile, Leather, Clothing and Footwear Manufacturing in Australia Reports (Various)*, viewed 1 November 2018, <https://www.ibisworld.com.au/industry-trends/market-research-reports/manufacturing/textile-leather-clothing-footwear/>

¹⁸ For example, communication, marketing, and administration expenses

¹⁹ IBISWorld 2018, *Women's and Girls' Wear Manufacturing in Australia, 2018*, IBISWorld, viewed 1 November 2018, <https://www.ibisworld.com.au/industry-trends/market-research-reports/manufacturing/textile-leather-clothing-footwear/>

²⁰ Australian Bureau of Statistics 2018, *Counts of Australian Businesses, including Entries and Exits, June 2013 to June 2017*, 'Businesses by Main State by Industry Class by Employment Size Ranges, data cube: cat. no. 8165.0, viewed 2 November 2018, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/8165.0Jun%202013%20to%20Jun%202017?OpenDocument>

²¹ Australian Bureau of Statistics 2018, 8155.0 - *Australian Industry, 2016-17*, Data Cube – Manufacturing Industry, viewed 5 November 2018, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/8155.02016-17?OpenDocument>

The FWO's experience is that wages are more susceptible to an employer's cost-cutting efforts than a reduction of fixed costs, particularly where businesses operate in a competitive market environment.

The workforce

Workers in the TCF sector possess characteristics associated with vulnerability, including a higher overall proportion of:

- women
- migrants
- mature aged, and
- unqualified workers, with less educational attainment overall.

Women comprise 59.1% of TCF workers - compared to 48% for all industries combined²² and 28% for manufacturing as a whole.²³ This share of the workforce is reflected in FWO workplace dispute data with 56.9% of TCF disputes originating from women, compared to an average of 42.9% for all industries combined.

The TCF sector also employs a higher proportion of people born overseas (44%), compared to all industries (30.4%).²⁴ The FWO's experience is that workers from culturally and linguistically diverse backgrounds are less likely to understand their workplace rights and entitlements. Moreover, vulnerable workers are less likely to approach their employer or the FWO with concerns about their working conditions.

The age profile of the TCF sector is notably older than that of both the manufacturing sector and all other industries taken as a whole. The industry has a comparatively low proportion of workers aged between 15-34 years, similarly, reflected in FWO dispute data.²⁵

As Table 2 shows, the sector employs a greater proportion of workers over 45 years of age. Significantly, the greatest proportion of workers engaged in the industry are 55 years of age or older (30.6%), whereas for all other industries the largest proportion of the labour-force is between 25-34 years of age (34.4%). Given the declining size of the industry, and the difficulties that older employees may face in finding alternative employment, or in re-skilling, this age profile may be considered a further indicator of workforce vulnerability.

²² Australian Bureau of Statistics 2016, *Census (2016)*, TableBuilder. Findings based on Table Builder data

²³ Ibid

²⁴ Ibid

²⁵ Between July 2015 and June 2017 for example, only 18.8% of disputes came from TCF workers between 15 to 25 years, significantly lower than the average of 26.8% received from employees in this age group across all industries

Table 2: Age profile comparison – textile, clothing and footwear v manufacturing & all industries²⁶

Employing Industries	15-24	25-34	35-44	45-54	55+
All Industries	14.3%	34.4%	22.1%	21.6%	19.1%
Manufacturing	11%	20%	24%	25%	20%
Textile, clothing and footwear	7.4%	15.1%	19.3%	27.5%	30.6%

The percentage of TCF workers possessing trade-related qualifications or a formal education beyond secondary level is lower than the average for all other industries combined.²⁷ The lack of higher-level educational attainment compounds the vulnerability of a labour force by imposing further barriers to alternative employment options.

Outworkers

Outworkers are contractors or employees who work from home, or at a location not normally classified as a business premises (for example, a garage attached to residential premises). For this reason, outworkers have long been described as a ‘hidden’ labour force.²⁸

The education phase of this campaign disclosed the majority of outworkers appear to be engaged in clothing production, sourcing work from industry participants operating at different stages of the supply chain, including retailers, wholesalers, manufacturers, intermediaries and even other outworkers.

Outworkers may take on multiple work orders at one time. The work they perform varies, but typically involves cutting, sewing, or finishing work such as embroidery, or sewing tags onto apparel.

Traditionally, the industry has relied on outworkers as a flexible source of labour to meet seasonal demand: their work can therefore fluctuate.²⁹ As they are the last link in the manufacturing process, they are also vulnerable to the efforts of those further up the supply chain to remain cost-competitive.

The ‘hidden’ nature of outwork and the position of outworkers at the end of varied and complex supply chains makes it difficult to estimate their number. The failure of many businesses that outsource work to

²⁶ Australian Bureau of Statistics 2016, *Census (2016)*, TableBuilder. Findings based on Table Builder data

²⁷ Australian Bureau of Statistics 2016, *Census (2016)*, TableBuilder. Findings based on Table Builder data

²⁸ For example: Textile, Clothing & Footwear Union of Australia 1995, *The hidden cost of fashion – report on the National Outwork Information Campaign*, TCFUA, Sydney, New South Wales

²⁹ Senate Standing Committees on Economics 1997, *Outworkers in the Garment Industry*, general inquiry report, Senate Standing Committees on Economics, viewed 23 November 2018, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Completed_inquiries/1996-99/outworkers/report/index

register their arrangements with the Board of Reference (as required by the TCF Award) compounds this lack of transparency. For these reasons, estimates vary as to the number of workers in the TCF industry.³⁰

Workplace relations settings

The Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012

The Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012 extended most of the provisions of the *Fair Work Act 2009* (the FW Act), including the National Employment Standards, to cover contract outworkers.

The FW Act defines an ‘outworker’ as an ‘employee who, for the purposes of the business of his or her employer, performs work at residential premises or at other premises that would not conventionally be regarded as being business premises’, or, an individual who, ‘for the purpose of a contract for the provision of services, performs work in the textile, clothing or footwear industry’.³¹

Persons (legal or natural) who arrange to have work performed for their business that ‘is of a kind often performed by outworkers’ are defined as ‘outworker entities’.³²

Textile, Clothing, Footwear and Associated Industries Award 2010 (TCF Award)

The TCF Award covers employers operating in TCF industry and their employees undertaking work covered by the award’s classifications. As the ‘TCF industry’ is itself composed of many different sub-industries, employers may operate businesses engaged in:

- textile manufacture
- clothing manufacture
- bag making
- button making
- footwear manufacture
- allied manufacturing and fabricating industries.³³

³⁰ The *Post-implementation Review of the Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012* noted that estimates of the number of outworkers have varied widely. Figures cited by the review range from over 300 000 (TCFUA, 1995) to 25,000. See: Department of Employment 2014, *Post-implementation Review of the Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012*, Department of Employment, viewed 2 November 2018, <https://ris.pmc.gov.au/2015/12/16/fair-work-amendment-textile-clothing-and-footwear-industry-act-2012>

³¹ *Fair Work Act 2009*, S12

³² *Fair work Act 2009*, S30F (1)(a)&(b)

³³ This category is broad and includes the processing and treatment of both natural and synthetic fibres, as well as weaving, printing, knitting, the repairing of fabrics and other incidental work connected with these operations: see Clause 3, TCF Award

TCF Award classifications cover workers engaged in roles that include (but are not limited to) the following:

- store-workers
- forklift drivers
- designers
- technical drawers (who prepare stencils, and films for screen printing)
- machine operators – including sewing machinists
- textile machine and sewing machine mechanics.

At the time of publication of this report, the minimum hourly rate of pay for any full or part-time factory-based employee covered by the TCF Award is \$18.93.³⁴

Fair Work Inspectors identified that many of the factory-based workers in the TCF Campaign were machinists, entitled to classification as ‘Skill Level 2’ as set out by the TCF Award.³⁵ At the time of this report, the minimum hourly rate for workers at this level is \$20.22 (for full or part-time workers).

Schedule F

Schedule F of the award requires that all outworkers (whether employees or contractors) receive certain minimum entitlements including:

- minimum hourly rates as prescribed by the TCF Award
- overtime, allowances and penalties
- the minimum entitlements set out by the National Employment Standards.

Under the terms of Schedule F, outworkers can only be engaged full-time (for 38 hours per week), or on a regular part-time basis. If part-time, they are entitled to no less than 15 hours per week, or ten with the consent of both the worker and the Union.³⁶

Schedule F imposes obligations on employers or outworker entities (known as ‘principals’) who outsource any aspect of their production.³⁷ They must:

- register with a Board of Reference prior to outsourcing work
- maintain a list of individuals or businesses they outsource work to, and submit updated lists on a quarterly basis to the General Manager of the Fair Work Commission and the state branch of the Union.³⁸

³⁴ The rate for an adult trainee engaged on a full-time or part-time basis

³⁵ TCF Award, Schedule B.3

³⁶ Textile, Clothing and Footwear Union of Australia (TCFUA)

³⁷ It is the only Modern Award to include outworker-specific provisions

³⁸ Importantly, principals must not outsource work to another principal who is unregistered - ensuring that if that principal outsources work, labour supply arrangements in the supply chain remain traceable

- supply a copy of a written agreement to the outworker specifying whether they are to be engaged on a full-time or part-time basis - outworkers cannot be engaged on a casual basis.

Importantly, a principal must supply the outworker with a copy of a written work record for each outsourcing arrangement that includes (but is not limited to):

- the principal's Board of Reference registration number
- a description of the work required, including instructions on how it is to be completed
- the number of units to be worked on
- how many minutes it is expected that each unit of work will take to complete
- the number of working hours this requires
- the total amount to be paid to the worker.

Schedule F establishes an ordinary minute rate as well as minute rates that apply to work performed on weekends and public holidays. At the time of publication of this report, the minimum minute rates are:

Table 3: Minimum applicable minute rates for outworkers under the TCF Award (as at 1 July 2018)³⁹

Ordinary minute rate	Saturday, Sunday or public holiday	Overtime
\$0.34	\$0.68	\$0.51

Applying the ordinary minute rate above, the minimum hourly rate to which an outworker is entitled (at the time of this report) is \$20.40.

Additionally, the principal must supply the outworker with a copy of Schedule F, and an information sheet about their workplace rights and entitlements. All documents, including the written agreement, must be in a language the outworker can understand.

³⁹ All applicable rates of pay are provided in the TCF Award Pay Guide provided on the FWO Website, <https://www.fairwork.gov.au/ArticleDocuments/872/textile-clothing-footwear-and-associated-industries-award-ma000017-pay-guide.docx.aspx>

Results

The Campaign found that of the 371 audits conducted in the compliance phase of the TCF Campaign:

- 288 (78%) businesses were paying their employees correctly
- 248 (67%) businesses were compliant with record-keeping and pay slip obligations
- 193 (52%) businesses were compliant with all requirements
- 178 (48%) were in breach of some aspect of their workplace relations obligations, whether monetary, non-monetary, or both.

Fair Work Inspectors recovered a total of \$84 846 from 68 businesses for 138 workers⁴⁰, including \$2174 recovered for five outworkers from four businesses (outworking entities).

The most common issues that Fair Work Inspectors identified were:

- record-keeping breaches (36% of all breaches)
- underpayment of the hourly rate (31%)
- pay slip breaches – the failure to provide in the prescribed form or within the required time (20%)

Non-compliance relating to penalties and overtime accounted for 5% of all breaches.

The FWO found that overall, larger businesses in the industry were more compliant than smaller businesses. The compliance rate for businesses with fifteen or more employees was 68%, compared to 47% for those with less than 15 employees. The FWO has found across all industries that larger businesses tend to have higher compliance rates as they often engage staff in dedicated payroll or human resources functions.

Reflecting the positive effect that professional support and advice has on compliance, the FWO also found that members of industry associations were more compliant than non-members. Overall, 67% of members were compliant with their workplace relations obligations, compared with the low compliance rate of 47% for non-members.

Schedule F compliance results

Fair Work Inspectors identified that of the 178 non-compliant businesses, 70 were in breach of one or more of the obligations set out by Schedule F of the TCF Award. Of these 70 businesses:

- 58 failed to register their outsourcing arrangements with a Board of Reference
- 33 were in breach of the requirement to maintain, keep and supply appropriate work records when entering into outsourcing arrangements
- 28 engaged outworkers

⁴⁰ Individual State and Territory Results are provided in Appendix B

- Nine were in breach of the requirement to maintain and submit quarterly lists of their outsourcing arrangements to the General Manager of the Fair Work Commission and state branch of the Union.

Compliance and enforcement outcomes

In the Campaign's education phase, the FWO conducted an extensive communication campaign about industry-specific rights and obligations, targeting all levels of the supply chain. The majority of businesses audited in the Campaign's compliance phase had received education from a Fair Work Inspector on their workplace relations obligations. This was a key consideration in the exercise of the compliance and enforcement tools toward those employers found to be non-compliant.

Of 178 businesses identified as non-compliant, Fair Work Inspectors issued 132 business with compliance and enforcement tools. This included:

- 31 Infringement Notices, totalling \$7560 in on-the-spot fines for pay slip or record-keeping breaches
- 107 Formal Cautions, 55 of which were issued to businesses for failing to satisfy the specific requirements of Schedule F
- four Compliance Notices, compelling businesses to pay \$23 158 to eight workers.

The following case studies discuss the use of these tools.

Formal Caution

Fair Work Inspectors issue Formal Cautions when they identify breaches, and it is appropriate to put a business on notice in writing that future non-compliance could result in the FWO seeking financial penalties.

Fair Work Inspectors audited a high-end fashion retail outlet that received education materials in the first phase of the TCF Campaign. The outlet had placed garment orders with a manufacturing business but had failed to register with the Board of Reference prior to entering into the arrangement (as per Schedule F of the TCF Award). The outlet was also required to provide a list of the individuals and businesses involved in these arrangements to the Board of Reference and to the relevant state branch of the Textile, Clothing and Footwear Union of Australia (or other relevant union). A Formal Caution was issued on the business, putting it on notice that future non-compliance with these obligations might result in court-ordered penalties.

Following the supply chain, Fair Work Inspectors audited the manufacturing business in question and identified that it outsourced sewing work to five contractor outworkers. The audit disclosed that this business had also failed to register with the Board of Reference or supply details of their arrangements to either the Board or a union. Fair Work Inspectors issued this business with a Formal Caution for failure to observe the provisions of Schedule F, ensuring all levels of the supply chain were compliant with their legislative obligations.

Infringement Notice

An Infringement Notice is a fine for non-compliance with the record-keeping or pay slip requirements of the Act and Regulations.

Fair Work Inspectors audited a school and work-wear manufacturer and found that the business was not providing the required information on its pay slips. The pay slips did not contain the Employer's name or ABN, the pay period, the net amount paid or any information about the employee's superannuation fund. The Inspectors also detected issues with the business's time records, finding that the hours of work recorded were inconsistent with the observations they made on the day of the site visit about worker attendance. The FWO issued the business with an Infringement Notice fining it \$360.

Compliance Notice

A Compliance Notice is a written notice legally requiring a business to rectify breaches of the Act. Failure to comply with a Notice can result in the FWO commencing legal proceedings.

During a visit to a garment making business, Fair Work Inspectors identified underpayments of three production employees. The employer had classified the workers as Level 1 employees under the TCF Award. However, after observing their duties, Fair Work Inspectors determined that they were performing work that required the employer to classify them at Skill Level 2. This meant that the three production staff had been underpaid a total of \$3747.19 over the course of 12 months. The FWO issued a Compliance Notice on the employer, legally compelling them to rectify the underpayment. The employer complied with the Notice and back-paid the full amount owing to the three employees,

Comparison of findings

The findings of the compliance phase of the TCF Campaign confirm that the TCF industry has a similar rate of compliance when compared to other industries operating in the manufacturing sector. The FWO identified that only 52% of businesses audited in this campaign were compliant with all workplace relations obligations. The average compliance rate for all manufacturing businesses audited during the 2016-2017 period was only marginally higher at 54%. Businesses in the manufacturing sector were among the least compliant businesses audited during this period.⁴¹

The proportion of business identified as compliant with monetary obligations was higher than the average compliance rate of all businesses subject to proactive compliance audits during the corresponding audit

⁴¹ For a breakdown of compliance by sector, see: Fair Work Ombudsman 2018, *National Compliance Monitoring Report 2016-2017*, <https://www.fairwork.gov.au/ArticleDocuments/714/national-compliance-monitoring-campaign-report-number-2.docx.aspx>

period (the 2016-2017 financial year). However, the percentage of business in breach of their non-monetary obligations was lower than the all-campaign average for the same period.

Table 4: A comparison of the average compliance rates of all FWO campaigns for the 2016-2017 period with those of TCF Campaign - Compliance Phase.

Workplace Relations Obligations	All Campaigns 2016-2017	TCF Campaign - Compliance Phase
Monetary	70%	78%
Non-monetary	75%	67%

The greatest proportion of breaches identified in the TCF Campaign related specifically to record-keeping obligations (36%). As Table 5 below shows, this is comparatively high when contrasted with the results of other campaigns conducted during the same period (the FWO's experience is that majority of breaches identified through its campaign activities typically relate to an underpayment of the hourly rate, or concern payslips).

Table 5: The proportion of record-keeping breaches identified in the TCF Campaign, compared with the results of major national campaigns undertaken during the 2016-2017 period.

Food Precincts Activities 2016-2017	National Compliance Monitoring Campaign 2016-2017	TCF Campaign - Compliance Phase
14%	7.5%	36%

As discussed earlier in this report, this result reflects the number of businesses identified as non-compliant with the technical requirements of Schedule F of the TCF Award in this campaign.

Conclusion

The FWO commenced the two-phased TCF Campaign to promote awareness of and compliance with industry-specific regulations.

The first phase provided the FWO with an opportunity to reach out to the industry's vulnerable workforce and their employers. The FWO educated workplace participants about their rights and obligations, and about the tools and resources the FWO provides to make compliance with workplace laws easier to understand and achieve.

The results of the campaign phase reveal the extent and nature of non-compliance in the industry. Nearly half (48%) of the businesses audited in the TCF Campaign were in breach of some aspect of their workplace relations obligations. The majority of breaches were non-monetary in nature.

Contributing to this result, 70 businesses were in breach of the outworker-related provisions of the TCF Award, in particular the failure to register with a Board of Reference. The FWO has responded by putting these businesses on notice that it may seek penalties before the courts should it identify any future non-compliance with the law. The FWO has also indicated it may revisit these businesses as part of its ongoing National Compliance Monitoring Program.

About the Fair Work Ombudsman

The Fair Work Ombudsman is an independent agency created by the *Fair Work Act 2009* on 1 July 2009. The Fair Work Ombudsman's role is to promote harmonious, productive and inclusive Australian workplaces as well as ensure compliance with Commonwealth workplace laws.

The Fair Work Ombudsman regularly conducts proactive campaigns targeting at-risk employers and employees as part of its monitoring function. As part of its role, the Fair Work Ombudsman encourages employers to implement sustainable self-monitoring compliance arrangements.

For media enquiries please contact the media team at media@fwo.gov.au

If you would like further information about the Fair Work Ombudsman's campaigns please contact Steven Ronson, Executive Director - Proactive Compliance at: steven.ronson@fwo.gov.au.

Appendix A

Asian Women At Work
Australian Chamber of Commerce and Industry
Australian Council of Trade Unions
Australian Industry Group
Australian Retailers Association
Brotherhood of St Laurence
Cabramatta Community Centre- Now 'CORE'
CFMEU - Manufacturing Division – TCF Sector (Formerly TCFUA)
Council of Textile and Fashion Industries Australia
Ethical Clothing Australia
Ethnic Communities' Council of NSW
Immigrant Women's Speak Out Association of NSW Inc.
Metro Assist (formerly Metro Migrant Resource Centre)
Migrant Resource Centre North West Region Inc.
Migrant Resource Centre of SA Inc.
Multicultural Communities Council of South Australia
NSW Business Chamber
Oxfam
Spectrum Migrant Resource Centre
Working Women Queensland
Working Women's Centre - South Australia

Appendix B

Compliance results by state and territory

State / Territory	Audits	Compliant	Not Compliant	Compliant with monetary obligations	Compliant with non-monetary obligations	Money recovered	Workers recovered for	Businesses recovered from
QLD	87	44 (51%)	43 (49%)	65 (75%)	56 (64%)	\$11 197	27	18
NSW/ACT	115	54 (46%)	62 (54%)	90 (78%)	75 (65%)	\$36 492	59	22
VIC	124	67 (54%)	57 (46%)	95 (77%)	86 (69%)	\$32 251	45	25
SA/NT	25	17 (68%)	8 (32%)	22 (88%)	19 (76%)	\$4 510	6	2
TAS*	8	4 (50%)	4 (50%)	7 (88%)	5 (63%)	-	-	-
WA	11	7 (64%)	4 (36%)	9 (82%)	7 (64%)	\$397	1	1

*Fair Work Inspectors identified non-compliance with monetary obligations in one audit. However, as the employer failed to keep sufficient records to enable calculations, the FWO was unable to evidence the breaches and recover money for the employee on this occasion. Fair Work Inspectors issued the employer with a Formal Caution.