



Compliance Monitoring

Outcomes from the Fair Work Ombudsman's
National Compliance Monitoring Campaign 2015

NATIONAL COMPLIANCE MONITORING CAMPAIGN 2015



891

previously non-compliant businesses audited



83%

of businesses paying their employees correctly



81%

of businesses were compliant with pay slip & record-keeping obligations



69%

of businesses now meeting all workplace relations obligations



\$207,990

recovered for 485 employees



174

formal cautions

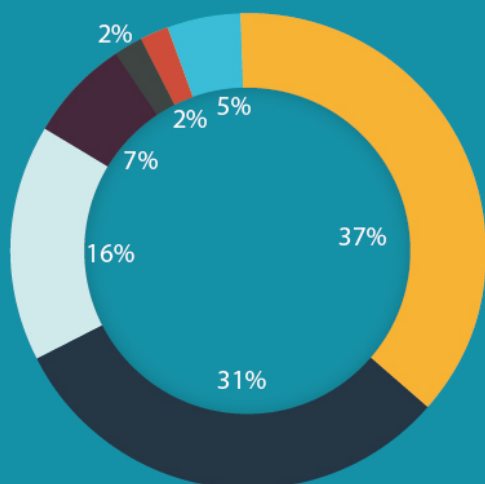
1

compliance notice

26

infringement notices

CONTRAVENTIONS BREAKDOWN



Pay slips

Wages

Penalty rates

Record-keeping

Overtime

Casual loading

Other

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Summary

The Fair Work Ombudsman (FWO) is committed to creating a culture of ongoing compliance with Australian workplace laws. The FWO undertakes education and compliance campaigns to assist businesses to comply with workplace laws. Where businesses have made errors and are not complying with workplace laws, Fair Work Inspectors assist them to get it right. The FWO expects those business will remain compliant.

The National Compliance Monitoring Campaign (the campaign) commenced in February 2015 and was undertaken to:

- Assess whether businesses found to have errors in previous FWO audit campaigns were now compliant
- Commence enforcement action for businesses that remained non-compliant, where appropriate.

The results of the campaign reveal the positive impact that FWO interactions are having on compliance. Of the 891 originally non-compliant businesses re-audited, 618 (69%) are now fully compliant and meeting all of their workplace relations obligations. Of the remaining non-compliant businesses, there were 195 where the FWO took enforcement action (using 201 enforcement tools). Most of the remaining 78 non-compliant businesses had made clear efforts to comply with their obligations, but a minor error was still detected. No enforcement action was taken in these cases.

Of the 891 businesses audited:

- 174 formal cautions, one (1) Compliance Notice and 26 Infringement Notices (on the spot fines) were issued to 195 businesses
- 737 (83%) were paying their employees correctly
- 725 (81%) were compliant with record-keeping and pay slip requirements
- 618 (69%) were now meeting all of their obligations
- \$207 990 was recovered on behalf of 485 employees.



What we did

Fair Work Inspectors contacted 891 businesses that had been audited by the FWO within the past 4 years and had been found to have errors. These businesses had been audited across a range of previous FWO campaigns.

A sample of time and wage records was assessed for compliance with the *Fair Work Act 2009* (the Act), the *Fair Work Regulations 2009* (the Regulations) and the applicable award/agreement. Fair Work Inspectors paid particular attention to the errors that had been identified for each business when previously audited.

Where further errors were identified, Fair Work Inspectors considered the reasons for the non-compliance to determine what action should be taken. Enforcement action was subsequently taken in relation to 195 non-compliant businesses.

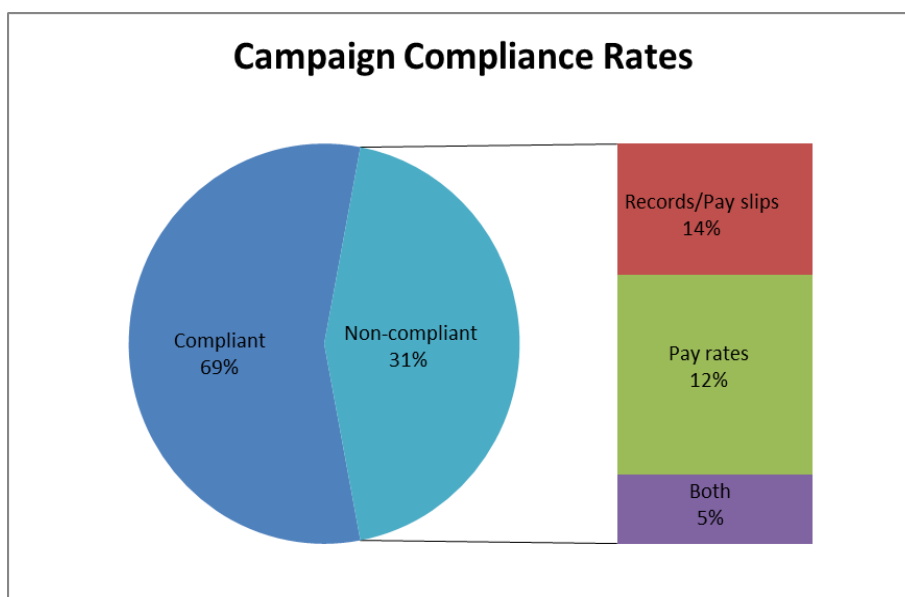
National outcomes



Of the 891 businesses audited:

- 618 (69%) businesses were compliant with all requirements.
- 273 (31%) businesses had at least one error:
 - 119 (14%) related to pay slips/records
 - 107 (12%) related to pay rates
 - 47 (5%) related to both pay rates and pay slips/records.

Figure 1: Campaign compliance rates



This means that:

- 737 (83%) businesses were now paying their employees correctly
- 725 (81%) businesses were now compliant with record-keeping and pay slip requirements

- 71% of the 273 non-compliant businesses were subject to enforcement action
- \$207 990 was recovered on behalf of 485 employees.



Campaign results by State and Territory can be found in **Appendix A**.

Compliant businesses

The results reveal the positive impact the FWO is having with businesses in assisting them to meet their workplace obligations. 618 (69%) businesses were now fully compliant and meeting all of their obligations under Australian workplace laws. Many of these businesses are small businesses that often do not have the benefit of dedicated Human Resources or payroll staff. Having made changes to their systems and processes to become compliant, this allows them to focus on other important areas of their business. After implementing these changes, there are generally only minor changes that periodically need to be amended when changes to pay rates and other obligations occur. Many businesses are now using the free resources provided by the FWO to do this, and have built these updates automatically into the ongoing running of their business.



Non-compliant businesses

Whilst 31% of businesses were found to be non-compliant, many of those businesses had made efforts to comply after their initial interaction with the FWO.

Where businesses were found to be non-compliant, Fair Work Inspectors considered the circumstances surrounding the non-compliance. Enforcement action was taken where:

- Businesses did not make efforts to comply.
- Businesses had major errors remaining (whether compliance was attempted or not).
- The non-compliance was similar or the same as the previous audit.

Enforcement action was considered, but not taken where:

- The business had changed ownership since the previous audit and the non-compliance was not significant
- Businesses were able to show clear evidence of having attempted to comply, however still had a minor error
- The non-compliance was minor, of a technical nature, and did not result in employees being underpaid.



Enforcement outcomes

The FWO expects businesses to take action to remain actively compliant with workplace laws. There were 201 enforcement actions taken in relation to 195 non-compliant businesses as part of the campaign. All businesses that were subject to an enforcement action will be re-audited and the FWO will not tolerate any business ignoring enforcement action. If the FWO finds further non-compliance, more serious action will be taken which may include putting businesses before the courts to seek financial penalties.

The aim of FWO's [Compliance and Enforcement Policy](#) is to deploy a range of compliance and enforcement tools, when warranted, in a proportionate way. That is, our compliance and enforcement tools escalate in seriousness and penalty depending on the risks to the community and the need for compliance. The Compliance and Enforcement Policy operates in conjunction with FWO's [Litigation Policy](#) and both of these policies are considered when making a determination in which compliance or enforcement outcome is appropriate.

A Compliance Notice is a written notice legally requiring a business to rectify contraventions of the Act. The decision to issue a Compliance Notice is not taken lightly, as failure to comply with a Compliance Notice may result in the FWO commencing immediate court action. The FWO can take action for both the original breaches and the failure to comply with the Compliance Notice. A failure to comply can result in significant financial penalties of up to \$27 000 for a company and \$5 400 for an individual.

One business was issued a Compliance Notice. In this case, a restaurant in Brisbane was identified as underpaying 10 employees a total of just over \$4 700. The restaurant was identified as underpaying staff when initially audited in early 2014, although by a considerably larger amount. While those underpayments were rectified, they were not rectified in timeframes required by Fair Work Inspectors at the time. Given this history, Fair Work Inspectors issued a compliance notice requiring all underpaid employees be back-paid within 28 days. This resulted in 10 employees being back-paid in full within 17 days of the notice being issued.

Formal cautions are a written warning when the FWO has found non-compliance and wants to put a business on notice that future non-compliance could result in the FWO seeking financial penalties. It outlines not only the contraventions identified by the FWO, but also the actions taken by the business to rectify those contraventions. In this campaign the FWO used formal cautions where the non-compliance identified did not meet the FWO's Litigation Policy. If the FWO becomes aware of any further instances of non-compliance, the issue of a prior formal



caution will be a factor taken into account in deciding whether to commence civil proceedings against the business and may be used as evidence in any penalty submissions to a court.

174 formal cautions were issued. Formal cautions were issued to businesses operating in more than a dozen industry sectors. 23 formal cautions were issued in the hair and beauty industry, 14 in the takeaway foods industry and 11 formal cautions were issued in the accommodation industry.

Campaign results by Industry can be found in **Appendix B**.

A total of 26 Infringement Notices were issued. An Infringement Notice is a fine given to a business for non-compliance with record-keeping or pay slip requirements of the Act and Regulations. The FWO has discretion on whether an Infringement Notice is issued and the amount of the fine (up to the legal maximum). The FWO considers aspects such as:

- Whether the business had taken steps to rectify the contraventions identified through previous audits
- Whether the breach impedes a Fair Work Inspector's ability to find or calculate underpayments
- Whether the breach meant that an employee did not have information needed to recover entitlements
- Whether the employer has a history of breaching time and wage record-keeping or pay slip requirements
- Whether the breach was deliberate to avoid obligations under Commonwealth workplace laws
- Whether the breach had significant implications, for example an employee being unable to secure a loan due to lack of pay records.

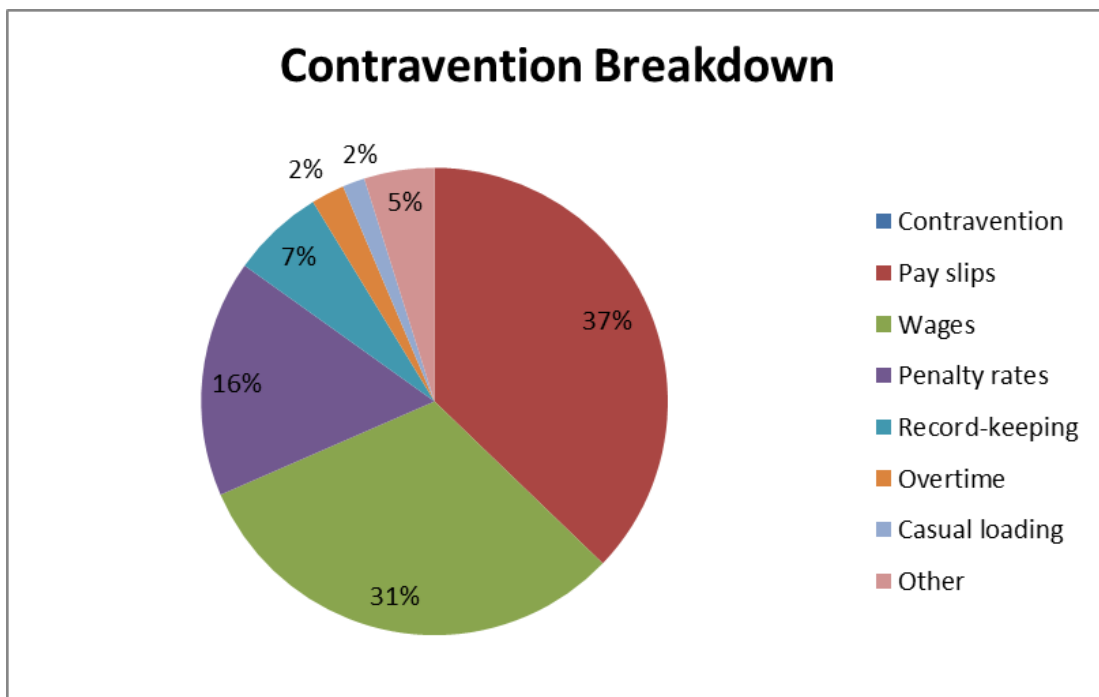




Individual errors

The 273 (31%) non-compliant businesses had a total of 390 individual errors across 25 different error types, as detailed in Figure 2. Over a third of non-compliant businesses had errors related to pay slips, whilst base wage rate errors accounted for 31% and penalty rate errors accounted for 16%. Fair Work Inspectors found that often the pay slip errors related to having no superannuation details or employer ABN details. All content required to be contained on employee pay slips is defined in the Regulations, and having complete content is necessary and required by law.

Figure 2: Contravention breakdown



When further assessing specific non-compliance, other identified issues included:

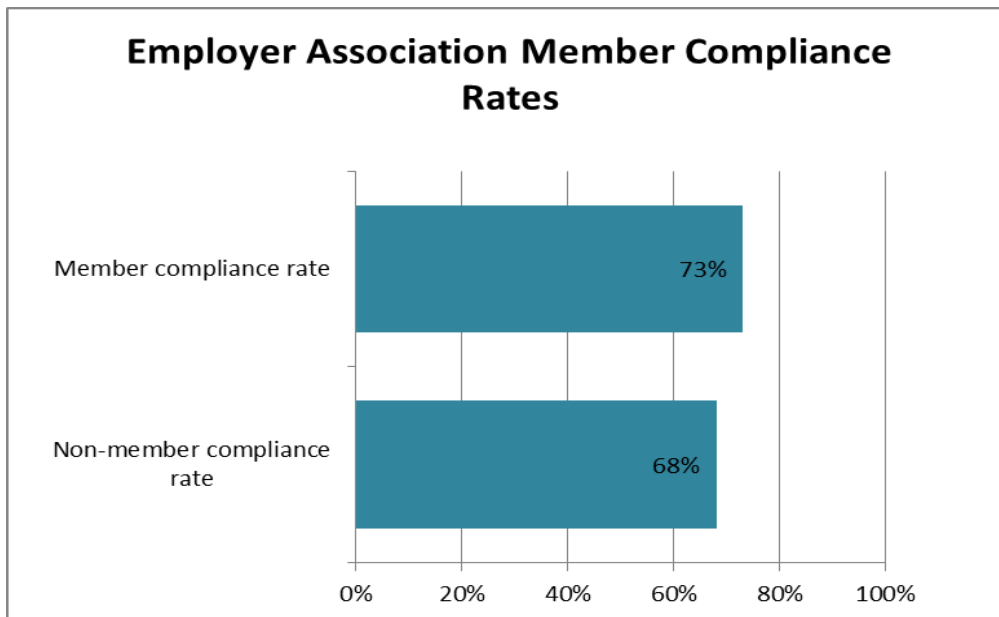
- Record-keeping (7%)
- Overtime (2%)
- Other loadings or allowances (2%)



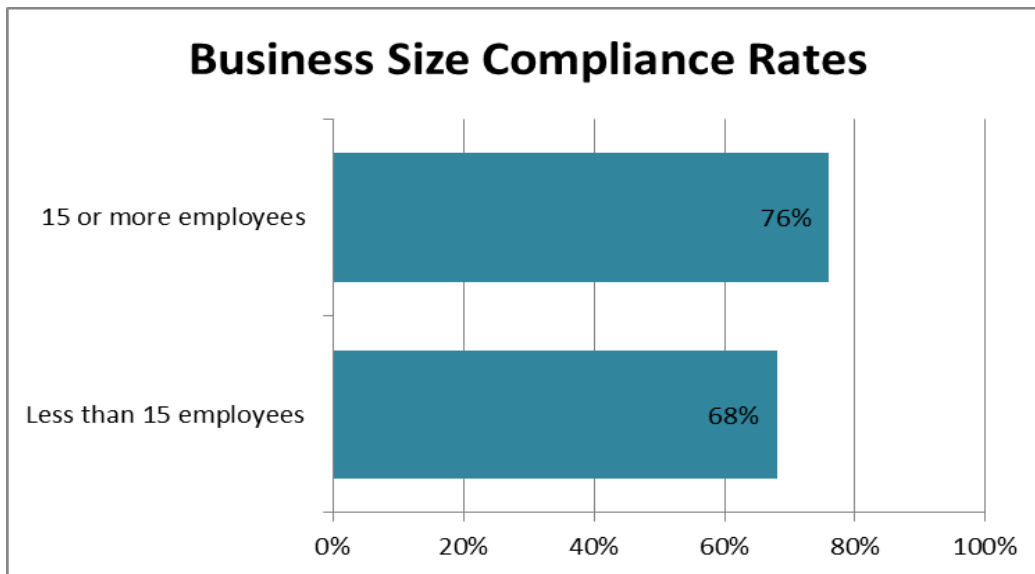
Association membership and business size

Businesses that were members of an industry or employer association had a higher compliance rate than businesses that were not members. Association member businesses had a compliance rate of 73% compared with a compliance rate of 68% for non-member businesses (see Figure 3). This suggests the positive effect employer associations have on compliance rates through assisting their members to remain compliant when issues have arisen.

Figure 3: Employer association compliance rates



Larger businesses (those with 15 or more employees) also had a higher compliance rate than smaller businesses (those with less than 15 employees). The compliance rate for larger businesses was 76% compared with a compliance rate of 68% for smaller businesses (see Figure 4).

Figure 4: Business size compliance rates

Conclusion

The campaign revealed that 83% of businesses were paying their employees correctly, and that 69% of businesses were compliant with all their workplace obligations. It is clear that after their initial interaction with the FWO, most businesses were able to use the advice provided by Fair Work Inspectors to continue to be compliant including up to a number of years later. This is significant as those businesses, many of them small businesses, now have systems and processes in place to continue to be compliant into the future. The campaign also found that in many cases where non-compliance was detected, businesses had made efforts to comply. However, it is important for all business to comply with all of their workplace relations obligations.

Where businesses had made no or little effort to comply, or where more significant issues remained at the time of this campaign, the FWO took enforcement action. Continuing non-compliance, particularly after being audited by the FWO, will not be tolerated. The FWO will re-audit all businesses issued with any enforcement outcome during this campaign, and will consider putting further instances of non-compliance before the courts to seek financial penalties.



About the Fair Work Ombudsman

The Fair Work Ombudsman is an independent agency created by the Fair Work Act 2009 on 1 July 2009. Our main role is to promote harmonious, productive and cooperative workplace relations.

Each year the Fair Work Ombudsman (FWO) runs proactive campaigns to assist employers and employees understand their rights and obligations under Commonwealth workplace relations laws.

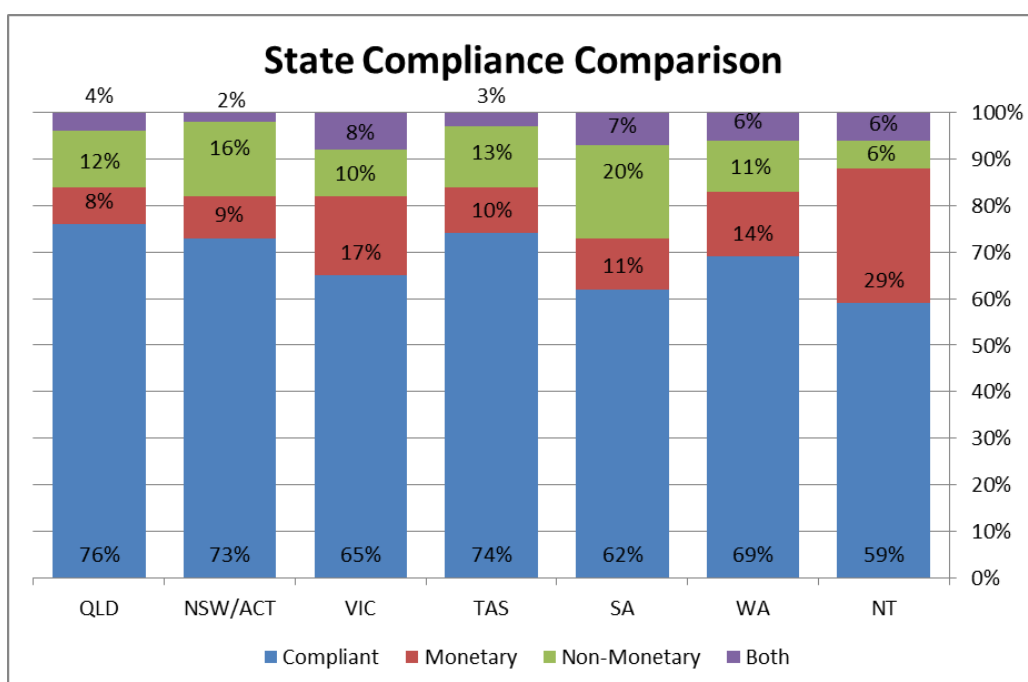
These campaigns can focus on particular industries, regions and/or labour market issues and are conducted on a national and state level.

This report covers the background, method and findings of the National Compliance Monitoring Campaign 2015. For further information 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 Lynda McAlary-Smith, Executive Director – Proactive Compliance and Education at Lynda.McAlary-Smith@fwo.gov.au.



Appendix A – State compliance comparison



State or Territory	Compliant	Non-Compliant	Most common errors	Amount recovered
New South Wales and ACT	142 (73%)	52 (27%)	Pay slips (27%) Underpayment (21%)	\$29,387 for 36 employees
Victoria	142 (65%)	76 (35%)	Underpayment (33%) Pay slips (27%)	\$31,628 for 100 employees
Western Australia	65 (69%)	29 (31%)	Underpayment (33%) Pay slips (31%)	\$40,584 for 110 employees
Queensland	146 (76%)	46 (24%)	Pay slips (40%) Underpayment (25%)	\$46,008 for 72 employees
South Australia	85 (62%)	53 (38%)	Pay slips (45%) Underpayment (30%)	\$49,262 for 139 employees
Tasmania	28 (74%)	10 (26%)	Pay slips (50%) Underpayment (42%)	\$4,678 for 13 employees
Northern Territory	10 (59%)	7 (41%)	Underpayment (75%) Pay slips (25%)	\$6,442 for 15 employees



Appendix B – Industry breakdown

