



Fair Work  
OMBUDSMAN

## National compliance monitoring campaign #2

November 2018

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## Executive summary

This report details the results of the Fair Work Ombudsman's (FWO) second National Compliance Monitoring Campaign (the Campaign), an ongoing FWO audit program that re-audits previously non-compliant employers.

During the Campaign, Fair Work Inspectors revisited 479 employers previously found to be in breach of their workplace relations obligations. The results of the Campaign found that nearly two-thirds (62%) of these employers were now fully compliant.

With respect to the 38% of businesses that remained non-compliant with an aspect of their workplace relations obligations, the FWO recovered \$244 246 from 98 employers for 347 workers.

In addition, as part of its National Compliance Monitoring program, the FWO audited a selection of Chemist Warehouse stores. In the course of these audits, the FWO asked Chemist Warehouse to check its network of stores had paid staff correctly for compulsory online training. The company conducted a review and identified that 5 976 workers had been underpaid \$3 569 212. This led to a compliance partnership between Chemist Warehouse and the FWO. The FWO's consideration and treatment of the Chemist Warehouse service network is the subject of a separate public report.<sup>1</sup>

Of the 184 employers identified as non-compliant, 151 (82%) were subject to the use of FWO compliance and enforcement tools, including:

- 56 Infringement Notices
- 16 Compliance Notices
- 88 Formal Cautions.

Where serious non-compliance was identified, the FWO:

- secured an enforceable undertaking with a fast food employer
- commenced legal proceedings against two employers resulting in a total of \$140 560 in penalties
- entered into a compliance partnership with the Chemist Warehouse franchise network.<sup>2</sup>

The results of the Campaign confirm that a majority of employers operating in industries susceptible to higher levels of non-compliance have been responsive to FWO monitoring and intervention strategies.

The findings from the Campaign also highlight the importance of the regulator's ongoing compliance monitoring.

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<sup>1</sup> The compliance activity involving Chemist Warehouse is the subject of a separate but related report – <https://www.fairwork.gov.au/ArticleDocuments/762/chemist-warehouse-proactive-compliance-deed-interim-report.pdf.aspx>

<sup>2</sup> <https://www.fairwork.gov.au/about-us/news-and-media-releases/2016-media-releases/december-2016/20161201-chemist-warehouse-mr>

## Background

In its commitment to building a culture of compliance with Australian workplace laws, the FWO undertakes frequent and regular education and compliance campaigns to assist businesses comply with their workplace relations obligations.

The FWO considers employers found in breach of their statutory obligations during these interventions to be at a higher risk of future non-compliance.

The National Compliance Monitoring (NCM) is a FWO program that re-audits previously non-compliant employers.<sup>3</sup> Through the program, the FWO:

- provides further assistance to employers who have demonstrated a commitment to ongoing compliance
- identifies employers that have continued to breach their workplace obligations
- engages specific and general deterrence measures through its proportionate use of compliance enforcement actions.

The program has four main objectives. These are to:

- assess the compliance status of previously non-compliant employers
- encourage sustainable compliance
- ensure proportionate, escalated enforcement action is taken to address persistent non-compliance
- assess the impact of earlier FWO interventions on employers previously identified as non-compliant.

By returning to monitor the compliance of individual employers previously found in breach of workplace relations obligations, Fair Work Inspectors gain insights on the effectiveness of the earlier interaction with the FWO in changing an employer's workplace practices, in particular, whether the prospect of a follow-up audit motivated the employer to adopt positive behaviours and changes.

For some employers, an interaction with the FWO motivates them to acquire information and better understand their workplace relations obligations. They voluntarily rectify any errors and demonstrate a willingness to prioritise their workplace obligations on an ongoing basis, irrespective of the prospect of a follow-up audit.<sup>4</sup>

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<sup>3</sup> The FWO commenced the NCM program in February 2015. The report on NCM campaign activities for 2015 can be found at: <https://www.fairwork.gov.au/reports/national-compliance-monitoring-campaign-report>

<sup>4</sup> New frontiers in best practice regulation; looking at latest thinking and practice to inform Australia's approach, Australian Government Department of Jobs and Small Business (June 2018), p.55.

The FWO has also found that issuing an Infringement Notice, Formal Caution or Compliance Notice during an interaction has an important deterrent effect. Employers who receive these compliance tools usually take steps to amend non-compliant behaviours in order to avoid the risk of more serious sanctions from FWO in the regulator's future compliance monitoring activities.

#### **Case study – taking steps to 'get it right'**

In 2014, Fair Work Inspectors audited a restaurant during the *National Hospitality Campaign- Restaurants Cafes & Catering*. The business was required to back-pay \$1158 to three workers after it was disclosed that the employees were receiving flat rates of pay that did not sufficiently cover weekend penalty rates.

The FWO re-audited the employer in 2016 during the *FWO/ASIC – Brisbane Metro Joint Initiative*. The employer had continued to pay employees a flat "market rate" (ostensibly, to compete with local businesses) that was insufficient to cover non-ordinary hourly rates and allowances. Fair Work Inspectors recovered \$6000 for four employees and issued the employer with a Formal Caution, putting the employer on notice that the FWO would likely commence legal proceedings if it identified future non-compliance.

When Fair Work Inspectors returned in *National Compliance Monitoring Campaign #2*, they found that the employer was fully compliant with their workplace relations obligations.

## National Compliance Monitoring Campaign #2

Fair Work Inspectors re-audited 479 employers found to be previously non-compliant. The nature of these earlier breaches varied significantly, and included:

- pay slip or record-keeping errors
- failure to issue pay slips or maintain records
- minor underpayments arising from a misunderstanding of award obligations
- multiple breaches of both monetary and non-monetary obligations
- non-compliance affecting vulnerable employees, including migrant and/or young workers
- non-compliance resulting in the use of a FWO compliance and enforcement tool.

The FWO relied upon these categories to select a mix of businesses of different sizes across various industries and locations, but with a particular focus on industries with high levels of non-compliance, including:

- Accommodation and food services
- Retail
- Construction
- Manufacturing.

Some of the more common awards applying to businesses audited in the Campaign included:

- *Restaurant Industry Award 2010*
- *General Retail Industry Award 2010*
- *Fast Food Industry Award 2010*
- *Building and Construction General On-site Award 2010*
- *Manufacturing and Associated Industries and Occupations Award 2010.*

Fair Work Inspectors contacted employers by phone and email to explain the Campaign's purpose and to request a recent sample of employee time and wages records for audit. As the majority of employers had dealt directly with the FWO in the previous audit of their business, they were familiar with the audit process.

Fair Work Inspectors assessed records for compliance with the *Fair Work Act 2009* (the Act), the *Fair Work Regulations 2009* (the Regulations) and the applicable award or agreement.

Where Inspectors identified breaches of workplace laws, they explored the reasons for continuing non-compliance by reviewing the nature of the non-compliance identified in the previous audit (e.g., whether the breaches were of the same type). Inspectors also gained insight into whether an employer had made an

effort to comply but required further assistance or indeed, the extent of the non-compliance had worsened through either carelessness or intent.

## Results

Of the 479 employers audited in the Campaign, Fair Work Inspectors found:

- 295 (62%) were compliant with all requirements
- 363 (76%) were compliant with their monetary obligations
- 379 (79%) were compliant with all pay slip and record-keeping requirements.

The FWO identified that 184 (38%) employers were in breach of their obligations. Of these:

- 84 (17.5%) were in breach of their monetary obligations, but were compliant with pay slip and record-keeping requirements
- 68 (14%) were in breach of their pay slip and record-keeping obligations, but were compliant with their monetary obligations
- 32 (6.5%) were in breach of both their monetary and non-monetary obligations.

The most common areas of non-compliance identified by Fair Work Inspectors were:

- failure to provide pay slips in the required form (33% of all breaches)
- underpayment of the hourly rate (32%)
- penalty rates (14%).

A total of \$3 813 458 was recovered for 6323 employees. This significant recovery included outstanding entitlements amounting to \$3 569 212 back-paid by Chemist Warehouse franchisees to 5976 staff.<sup>5</sup> The FWO found that 70% percent of larger businesses (with 15 or more employees) were compliant. The compliance rate for smaller businesses was lower (62%). While the FWO acknowledges small business employers frequently lack access to dedicated human resources or payroll services, in addition to the advice and assistance provided by the FWO during earlier audits, non-compliant small business employers also have access to workplace relations resources the FWO specifically tailors for their needs.<sup>6</sup> The FWO expects that given this support and previous interactions, employers irrespective of business size, can achieve sustained compliance with their workplace obligations.

Fair Work Inspectors also found that employers who were members of an industry or employer association had a higher compliance rate (70%) than employers who were not (61%). Membership of an association has

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<sup>5</sup> <https://www.fairwork.gov.au/ArticleDocuments/762/chemist-warehouse-proactive-compliance-deed-interim-report.pdf.aspx>

<sup>6</sup> Such as the FWO's Small Business Showcase: see <https://www.fairwork.gov.au/small-business-showcase>

a positive impact on employer compliance due to the workplace relations support an association can provide its members. However, to improve on these results, the FWO will continue to engage with employer representatives and wherever possible assist them in promoting sustained compliance with workplace laws throughout their membership network.

## Compliance and enforcement outcomes

The FWO expects all employers to prioritize and remain compliant with their workplace relations obligations.

Employers who are reckless or deliberate in their continued disregard of their workplace obligations can expect the FWO to use its strongest compliance and enforcement tools. The FWO employs both specific deterrence measures such as commencing legal proceedings against employers in order to secure financial penalties as well as general deterrence measures such as publicising enforcement outcomes with a clear message about the consequences of serious non-compliance to others.

In accord with the FWO's Compliance and Enforcement Policy, Fair Work Inspectors consider a range of factors when determining the most appropriate compliance and enforcement response to repeated breaches of the law.<sup>7</sup> The FWO will use stronger sanctions when:

- the same type of non-compliance is repeated
- the business has not taken any proactive steps to become compliant between audits
- the business does not cooperate with our processes
- there are underpayments
- breaches involve vulnerable workers
- the breaches are wide-ranging in their effect, impacting on multiple employees.

The nature of the non-compliance identified in this Campaign ranged from payslip omissions to the wilful disregard of minimum employment obligations.

Of the 184 employers found to be in breach of their workplace relations obligations in the Campaign:

- 151 (82%) were subject to the use of FWO compliance and enforcement tools (of these, 13 were issued with more than one tool)
- 88 (48%) were issued with Formal Cautions

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<sup>7</sup> A copy of the FWO's Compliance and Enforcement policy can be accessed at: <https://www.fairwork.gov.au/about-us/our-vision/compliance-and-enforcement-policy>

- 54 (29%) were issued with Infringement Notices (fines) amounting to \$20 340 in penalties for pay slip or record-keeping breaches
- 16 were issued with Compliance Notices, compelling them to back-pay \$61 565 to 100 employees
- Fast food franchisor ([Xin Long Pty Ltd](#)) – entered into an Enforceable Undertaking with the FWO after re-paying \$5122 to employees, which required them to amend their workplace relations practices
- Two nail salon owners operating in Adelaide were litigated by the FWO for deliberate non-compliance with workplace laws. The FWO recovered \$60 514 in outstanding entitlements for a total of seven employees and the court imposed penalties amounting to \$140 560 across the two matters<sup>8</sup>.

A significant outcome of the Campaign was the discovery of unpaid training in the Chemist Warehouse network of outlets.

### **Chemist Warehouse Compliance Partnership**

Fair Work Inspectors audited the time and wage records of a number of Chemist Warehouse outlet stores across Australia as part of the FWO's National Compliance Monitoring program. All audited outlets were compliant with the pay rates prescribed by the *Pharmacy Industry Award 2010*, and the pay slip and record-keeping obligations of the Fair Work Act and Regulations. However, the FWO asked Chemist Warehouse Head Office to check whether outlet staff had been paid correctly for online training undertaken after hours. Notwithstanding the company had previously notified outlets that all training was to be paid, a review found 294 outlets owed 5976 employees a total of \$3 569 212.

The company ensured that all affected employees were back paid in full. To improve compliance throughout its network, Chemist Warehouse entered into a three-year compliance partnership with the FWO on 24 November 2016. The progress of the compliance partnership is detailed in the FWO's Retail Services Pty Ltd (Chemist Warehouse) Proactive Compliance Deed Interim report<sup>9</sup>.

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<sup>8</sup> FWO media releases covering these litigation results can be accessed at:

<https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/august-2018/20180830-hongyen-penalty>

<https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/july-2018/20180710-house-of-polish-penalty>

<sup>9</sup> <https://www.fairwork.gov.au/ArticleDocuments/762/chemist-warehouse-proactive-compliance-deed-interim-report.pdf.aspx>

Overall, there was an 11% increase in the use of compliance and enforcement tools compared with the previous National Compliance Monitoring Campaign (see Table 1).<sup>10</sup>

A greater proportion of non-compliant employers were also subject to the use of FWO’s specific enforcement powers (Infringement and Compliance Notices, Enforceable Undertakings, and litigation). These escalated responses are reflective of the more serious nature of the breaches identified, as well as the FWO’s continuing resolve to address and deter persistent non-compliance.

**Table 1: A comparison of compliance and enforcement outcomes from current and previous National Compliance Monitoring campaigns.**

FWO compliance and enforcement responses	NCM #1	NCM #2
Formal Cautions	174	88
Infringement Notices	26	56
Compliance Notices	1	16
Enforceable Undertakings	-	1
Litigations	-	2
Proactive Compliance Deeds (Compliance Partnership)	-	1
Overall employer non-compliance rate	31%	38%
Percentage of non-compliant employers subject to compliance and enforcement tools	71%	82%

Case studies explaining the use of FWO’s compliance and enforcement responses in the National Compliance Monitoring Campaign 2016-2017 are outlined below.

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<sup>10</sup> NCM 2015-16 report: <https://www.fairwork.gov.au/reports/national-compliance-monitoring-campaign-report>

# Case studies

## Formal Caution

Fair Work Inspectors issue Formal Cautions to put an employer on notice that future breaches might result in the FWO seeking the imposition of financial penalties through legal proceedings.

### **Formal Caution: repeated underpayments of Award entitlements**

Fair Work Inspectors re-audited a food retail business previously found to have underpaid employees and not provided pay slips. The FWO provided information to help the employer comply with all monetary and pay slip obligations.

Returning to the business, Inspectors found the employer was still paying staff less than the minimum pay rates required for their respective classifications. This included an employee who had been back-paid following the earlier audit. The employer was also issuing incomplete pay slips as required by the Act and Regulations.

The FWO issued the employer an Infringement Notice for the continuing non-compliance with pay slip obligations. Fair Work Inspectors also issued the employer with a Formal Caution after recovering outstanding employee entitlements for a second time, warning the employer that future breaches could result in litigation.

## Infringement Notice

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

### **Infringement Notice: repeated breaches of pay slip obligations**

Fair Work Inspectors audited a fast food business and found the employer issued pay slips to staff that omitted the business ABN. They educated the employer about the pay slip obligations detailed in the Act and Regulations, including the requirement for the ABN.

When Inspectors re-audited the business during the Campaign, they found the employer was not issuing payslips at all. The FWO issued the employer with Infringement Notices for the amount of \$1800.

## Compliance Notice

A Compliance Notice is a written notice that requires an employer to rectify breaches of the Act. Failure to comply with the requirement of a Compliance Notice can result in the FWO commencing legal proceedings.

### **Compliance Notice: additional breaches found in a follow-up audit**

Fair Work Inspectors had previously audited a fast food business and identified it had underpaid staff the ordinary hourly pay rates prescribed by the *Fast Food Industry Award 2010* (the Award). The employer was required to pay three casual workers \$3700 in outstanding entitlements.

Returning to check on the employer's compliance, Fair Work Inspectors found both repeated and new breaches of the Award. The employer had underpaid staff their minimum ordinary hourly rate, as well as Saturday penalty rates. The business also failed to observe the Award's minimum engagement provisions. Two of the affected workers, including a junior employee, had been back-paid during the previous audit.

Fair Work Inspectors issued a Compliance Notice to address the employer's continued non-compliance, requiring them to back-pay \$2391 to three workers.

## Enforceable Undertaking

An Enforceable Undertaking is a legally binding agreement in which an employer publicly admits and agrees to rectify serious breaches of the law. It requires an employer to take a number of steps to remain compliant. This includes workplace relations training, self-auditing, and regular reporting to FWO. An Enforceable Undertaking can remain in place for a period of up to five years.

### **Enforceable Undertaking: serious, but unintentional non-compliance**

Fair Work Inspectors audited Xin Long Pty Ltd, trading as Mr Kitchen, a fast food outlet in Doncaster, Melbourne<sup>11</sup>.

The employer underpaid casual staff both the ordinary hourly and penalty rates set out in the *Fast Food Award 2010* (the Award). Six employees, including international students from Taiwan and China, were underpaid \$5122. The employer also failed to issue pay slips or keep accurate time and wage records.

The business owners were migrants with limited awareness of Australian workplace laws. The FWO determined their non-compliance was the result of genuine misunderstanding and a failure to inquire into their workplace relations obligations.

The employers acknowledged the seriousness of the breaches and expressed their willingness to cooperate with the FWO to achieve lasting compliance by entering into an [Enforceable Undertaking](#) with the FWO that required them to:

- rectify all underpayments
- conduct self-audits
- notify their employees about the Enforceable Undertaking
- register for FWO's My account
- complete workplace relations training on the Act and the Award.

The business has met all of the obligations required by the Enforceable Undertaking.

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<sup>11</sup> <https://www.fairwork.gov.au/about-us/news-and-media-releases/2015-media-releases/august-2015/20150819-mr-kitchen-presser>

## Litigations

The FWO responds to serious instances of non-compliance by taking employers to court to enforce the law and to seek penalties. These cases typically involve a combination of the following:

- deliberate non-compliance
- exploitation of vulnerable workers
- failure to cooperate with the regulator after being given opportunities to do so and advised of the consequences.

### ***FWO v Hongyen Pty Ltd & Anor***

Fair Work Inspectors first audited “Citi Nails”, a salon operating in Modbury, Adelaide, in 2012 as part of the National Hair and Beauty Campaign. Fair Work Inspectors identified that the employer underpaid the base hourly and weekend penalty rates of all staff. The FWO recovered \$4353 for six nail technicians and educated the employer about the terms and conditions of the *Hair and Beauty Industry Award 2010* (the Award).

Fair Work Inspectors re-audited the employer as part of the National Compliance Monitoring Campaign #2 and identified multiple breaches of the Award including, failure to pay:

- minimum pay rates
- casual loading
- weekend penalty rates
- annual leave loading

Fair Work Inspectors recovered \$7493 for five employees (one had also been back-paid in the previous audit), and commenced legal proceedings in the Federal Circuit Court.

The Court noted that the affected employees were vulnerable given the type of business in which they worked and their non-English speaking backgrounds.

During the proceedings, the employer’s company, Hongyen Pty Ltd was placed in liquidation.

However, the Court found that the employer Albert Tran, as the company director, was personally liable for breaches involving minimum pay rates, casual loadings, rostering and the accrual of annual leave. It noted that the employer was “in a situation where it must be inferred that he knew... his obligations”, but that “he chose not to observe them”.

The Court issued the employer with a penalty of \$10 560.<sup>12</sup>

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<sup>12</sup> <https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/august-2018/20180830-hongyen-penalty>

The following case is an example where the FWO had previously warned the employer about the consequences of continuing non-compliance. Rather than change their workplace behaviours, the employer attempted to deceive the FWO.

***FWO v Minh Gia Le & House of Polish Central Pty Ltd***

Fair Work Inspectors investigated Adelaide nail salon, House of Polish, after receiving a request for assistance from a nail technician in December 2015.

Prior to that request, House of Polish, had previously been audited on two occasions.

In 2012, the FWO recovered \$1325 for six employees who were paid less than their minimum entitlements under the *Hair and Beauty Award 2010*.

In *National Compliance Monitoring Campaign #1*, the FWO found ongoing underpayment breaches resulting in recoveries of \$2844 for six staff. The employer, Mr Le, was issued with a Formal Caution and put on notice that further breaches may result in legal proceedings.

In December 2015, the FWO received a Request for Assistance from a nail technician that suggested Mr Le was continuing to break the law, and commenced an investigation.

Mr Le did not cooperate with the FWO and supplied falsified records in an attempt to show his employees were receiving higher rates of pay. Through the course of the investigation, the FWO established that Mr Le had continued to pay his employees less than their minimum entitlements.

The FWO recovered \$53 021 for two migrant workers of the business, who had limited understanding of their workplace rights, and commenced legal proceedings in the Federal Circuit Court.

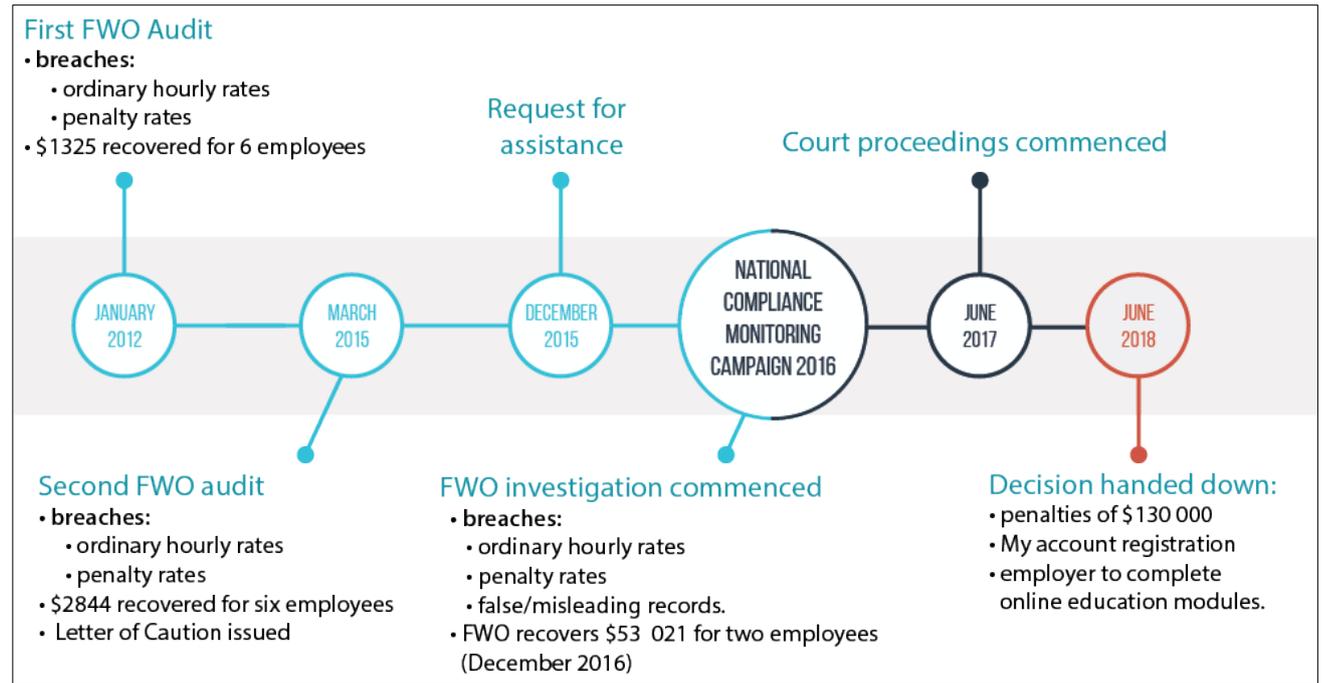
The Court found that after two previous encounters with the FWO, Mr Le 'was aware of his responsibilities'. It also described the employer's deliberate attempt to deceive the FWO as an 'elaborate sham' that 'worsened the offending'.

The court imposed penalties of \$30 000 against Mr Le, and \$100 000 against his company, House of Polish Central Pty Ltd. Mr Le was also required to register for the FWO's My Account and complete the FWO's online training modules for employers.<sup>13</sup>

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<sup>13</sup> FWO media release: <https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/july-2018/20180710-house-of-polish-penalty>

**Time Line: FWO v Minh Gia Le & House of Polish Central Pty Ltd.**



## Comparison of findings

The results of the FWO's second National Compliance Monitoring Campaign confirm the positive effect that the FWO's audit activities have on employer compliance levels.

Setting aside the findings relating to the Chemist Warehouse service network, the Campaign found nearly two-thirds (62%) of previously non-compliant employers were now fully compliant.

At 62%, the overall employer compliance rate<sup>14</sup> for the Campaign is 9% higher than the average compliance rate of all proactive compliance and education audits undertaken during a corresponding period (53%)<sup>15</sup>.

Moreover, a comparison of employer compliance with monetary and non-monetary<sup>16</sup> workplace relations obligations for the 2016-2017 period reveals a similar trend.

**Table 2: A comparison of the averaged compliance rates of all FWO campaigns for the 2016-2017 period with those of National Compliance Monitoring 2016-2017.**

Compliance obligation	Average all-campaign	National Compliance Monitoring
Monetary	70%	76%
Non-monetary	75%	79%

This favourable comparison of compliance rates is even more significant considering that the campaign's methodology involved businesses that had been non-compliant in the past.

In nearly all industries, the compliance rate is at least equal to (and in most cases greater than) the average compliance rate for all other campaigns combined (see Table 3). The results show that employers who operate in these industries are responsive to compliance monitoring strategies.

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<sup>14</sup> 'Overall compliance' refers to compliance with all workplace relations obligations.

<sup>15</sup> The period of measurement for average all-campaign compliance rates is the 2016-2017 financial year, the FWO's annual reporting period. National Compliance Monitoring Campaign #2 covered a longer period from January 2016 until June 2017. The difference in reporting periods, as well as variance in campaign scope, size and methodology means that all comparisons discussed here are treated as indicative of compliance trends, and are not considered absolute.

<sup>16</sup> 'Non-monetary' refers to pay slip and record-keeping obligations as set out by the Act and Regulations.

**Table 3: A comparison of major industry compliance rates between all FWO campaigns and the National Compliance Monitoring, for the 2016-2017 period<sup>17</sup>.**

Industry	Average all-campaign compliance rates	NCM campaign compliance rates
Accommodation and Food Services	42%	55%
Administrative and Support Services	59%	71%
Construction	57%	56%
Health Care and Social Assistance	67%	67%
Manufacturing	54%	61%
Other Services	53%	63%
Professional Scientific and Technical Services	57%	75%
Retail Trade	53%	65%
Wholesale Trade	56%	60%

While highlighting the positive impact that the FWOs audit interactions have on employer behaviours, these results also confirm the need for continued monitoring, especially in industries with the highest levels of non-compliance.

In the Accommodation and Food Services industry, for example, the results show that 45% of employers previously identified as non-compliant continued to operate in breach of their workplace obligations. This means that the industry had both the highest recorded rate of non-compliance (all-campaign compliance rate), and sustained non-compliance (National Compliance Monitoring compliance rate) in the 2016-2017 period.<sup>18</sup> Consistent with previous findings, such as those discussed in the recent Food Precincts Activities report<sup>19</sup>, the sector is one of the FWO’s ongoing compliance priority areas.

Responding to this finding, Fair Work Inspectors used compliance and enforcement tools in 86% of all audits in the Accommodation and Food Services industry where they identified repeat non-compliance. These actions accounted for 32% of all compliance and enforcement tools used in the Campaign, including:

- 29 Formal Cautions
- 15 Infringement Notices
- Seven Compliance Notices
- Enforceable Undertaking with Xin Long Pty Ltd.

Similarly, based on the sample of audits undertaken during this Campaign, 44% of employers in the Construction industry also failed to achieve and maintain compliance with workplace laws following an earlier FWO audit. As a result, around 86% of these employers also received a Formal Caution, Infringement, or Compliance Notice.

<sup>17</sup> Only the most relevant selection of industries subject to FWO audits have been included in the table.

<sup>18</sup> FWO also received the highest number of Requests for Assistance from the Accommodation and Food Services industry (17% of all Requests for Assistance) in the 2016 -2017 period.

<sup>19</sup> FWO Food Precincts Activities Report, July 2018: <https://www.fairwork.gov.au/reports/food-precincts-activities-report>

## Conclusion

The FWO assists employers who seek to comply with their statutory obligations by providing them with free tools and resources designed to make compliance easier to achieve. Fair Work Inspectors also support employers by providing advice and assistance during proactive compliance and education audits. However, not all employers are motivated to comply with workplace laws, even when ongoing support is available.

As a best practice regulator, the FWO is committed to monitoring employers it identifies at risk of continued non-compliance with their workplace relations obligations. The National Compliance Monitoring program provides the FWO with the means to detect, disrupt and deter persistently unlawful workplace practices. It also ensures there are tangible consequences for those employers who may only respond to the risk of detection and sanction, or when subject to the use of the FWO's compliance and enforcement powers.

The FWO has found that earlier audit interventions, coupled with the prospect of ongoing compliance monitoring, have had a positive impact on the majority of employers re-audited in this campaign. The results show that 62% of employers previously identified in breach of their workplace obligations achieved compliance following a previous interaction with a Fair Work Inspector.

Around three quarters (76%) of this group achieved compliance with their monetary obligations, while 79% were fully compliant with their payslip and record-keeping obligations. These results are also comparatively higher than the average compliance rates of all other campaign activities combined for the corresponding period.

The FWO also identified that 38% of employers re-audited in this Campaign were in breach of workplace laws.

Setting aside the case of Chemist Warehouse, the Campaign recovered \$244 246 from 98 employers for 347 workers. Wherever a pattern of non-compliance was detected the FWO responded with an appropriate compliance or enforcement tool. Where the FWO identified unlawful conduct that was particularly serious, wilful or significant in its impact on vulnerable workers, it used its strongest enforcement powers.

The FWO will continue to focus on high-risk employers operating in these sectors, and engage with key industry stakeholders to assist them in targeting repeat non-compliance in their membership network.

The National Compliance Monitoring program reinforces the need for the FWO to adopt a multi-faceted approach to workplace-relations regulation, drawing upon both educative and enforcement activities to drive long-term behavioural change in Australian workplaces. To that end, the FWO has recently commenced a third National Compliance Monitoring Campaign.

## About the Fair Work Ombudsman

The Fair Work Ombudsman (FWO) 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.

The FWO has a range of resources and publications for employers and employees on our website at [www.fairwork.gov.au](http://www.fairwork.gov.au), including our [Strategic Intent](#) and [Compliance and Enforcement Policy](#) which explains how we approach fulfilling our role.

Each year we run proactive campaigns to assist employers and employees understand their rights and obligations under Commonwealth workplace relations laws. Our campaigns focus on particular industries, regions and/or labour market issues, and we conduct them on a national or regional level.

For further information about this campaign, please contact Nicky Chaffer, Executive Director, Proactive Compliance and Education, at [Nicky.Chaffer@fwo.gov.au](mailto:Nicky.Chaffer@fwo.gov.au).

For media enquiries please contact the media team at [media@fwo.gov.au](mailto:media@fwo.gov.au).