



Campaign Evaluation Report

Cafe and restaurant proactive compliance campaign

October 2019 – October 2020

Campaign Snapshot




4 out of 5 inspected cafes and restaurants **did not comply** with State employment laws




77 cafes and restaurants physically inspected


\$348,890 in underpayments for 369 employees from 49 businesses



only 18% complied with employment laws



48% of audited cafes and restaurants did not comply with record keeping requirements



Overview of campaign

In October 2019, the Private Sector Labour Relations Division (PSLR) of the Department of Mines, Industry Regulation and Safety commenced a proactive compliance campaign focussed on cafes and restaurants operating in the state industrial relations system. From anecdotal information, reactive complaints and the 2019 Inquiry into Wage Theft in Western Australia, this sector has been identified as having a high level of non-compliance with employment obligations. As of May 2020, it was estimated that 53,700 employees were working for more than 7,000 cafes, restaurants and takeaway businesses in Western Australia.¹

In the state industrial relations system, cafes and restaurants which operate as sole traders, unincorporated partnerships and trusts are covered by the *Restaurant, Tearoom and Catering Workers' Award* (RTC Award). The RTC Award outlines the minimum hourly rate of pay for ordinary hours worked Monday to Friday, as well as penalty hourly rates of pay for working on weekends and public holidays. It is estimated that approximately half of all cafes, restaurants and takeaway businesses in Western Australia may be covered by the state industrial relations system.²

Employees of cafes and restaurants are particularly vulnerable as a significant proportion are migrant or visa workers who often face barriers in understanding their employment rights. At the time of the 2016 Census of Population and Housing, one-third of employees working in cafe, restaurant and takeaway businesses in Western Australia were recent migrant or visa workers (since 2006) with one in 10 stating that they did not speak English well or not at all.³

Furthermore, half of all employees were aged between 15 and 24 years of age (50.2%) with almost two-thirds working on a part time or casual basis (62.7%).⁴ Many of these employees would be employed in their first job and may not be aware of their employment rights.

Stage 1 – Education of business owners

On 1 October 2019 more than 700 education packs were sent to cafe and restaurant businesses located in the metropolitan area identified as potentially being covered by the state industrial relations system.⁵ These included businesses identified as being sole traders, partnerships between individuals and trusts where the trustee was identified as being an individual. This business list was sourced from the Australian Business Register which is maintained by the Australian Taxation Office.

Each business received an introductory letter informing them of the proactive compliance campaign and that they may be visited by industrial inspectors. The pack also included a brochure outlining key information on pay rates and other entitlements under the RTC Award.

¹ ABS (2020) *Labour Force, Australia, Detailed, Quarterly, May 2020*, cat. no. 6291.0.55.003, data cube EQ06 and ABS (2020) *Counts of Australian Businesses, including Entries and Exits, June 2015 to June 2019*, cat. no. 8165.0, data cube 2.

² ATO (2018) Unpublished Australian Taxation Office aggregate business tax information for 2015-16 (entity type by number of employees and detailed industry).

³ As above.

⁴ ABS (2017) *Census of Population and Housing 2016*, Table builder accessed 14/09/2020.

⁵ State system businesses included in the proactive campaign were identified as shop front cafes and restaurant that were more likely to employ. Businesses that operated catering or takeaway operations were excluded from the campaign.

The education pack mail out was also accompanied by the establishment of a dedicated web page for the campaign on the Wageline website which provided supporting information about the campaign and the RTC Award (www.dmirs.wa.gov.au/restaurants).

The mail out of the education packs generated significant interest, with 37% of recorded Wageline calls relating to the hospitality industry during November 2019.

Stage 2 – Onsite inspections and compliance audits

The business list was divided into three so that three pairs of industrial inspectors could begin the proactive audit. Each potential business to be inspected was researched prior to visiting. This included website, Facebook, maps and online reviews to identify the location and business characteristics, such as available seating and potential employee numbers. This research included assessing whether the business was still operating and had employees on the premises.

The compliance inspections began approximately two weeks after the education packs were sent. Two industrial inspectors physically attended the workplace unannounced, and while at the premises:

- interviewed employees and asked them questions such as their hourly rate of pay and how they were paid (e.g. in cash or by EFT);
- interviewed the employer and/or manager and asked them questions including how many employees they employed and whether the employees were casuals or permanent;
- viewed records kept at the premises; and
- inspected record keeping methods (e.g. electronic sign-on).

Each employer that was visited received a letter informing them that they had been selected to be inspected, as well as a Notice to Produce Employment Records (NTP) requiring them to produce prescribed employment records within a specified timeframe to an industrial inspector. The NTP requested detailed pay slip and timesheet records for all employees over a three-month period.

From October 2019 to October 2020, industrial inspectors visited or investigated 125 businesses in the Perth metropolitan area.⁶

Of these businesses:

- 20 did not employ;
- 11 were not trading during the audit period;
- 14 were found not to be covered by the state industrial relations system;
- 3 were referred to formal investigation due to obstruction; and
- 77 were inspected or investigated by industrial inspectors.

⁶ Additional inspections were also undertaken in the greater Geraldton region due to a number of reported complaints by employees.

Due to the introduction of COVID-19 pandemic restrictions in March 2020, many cafes and restaurants temporarily closed. The proactive compliance campaign was therefore suspended for an appropriate period of time.

The campaign evaluation results in this report analyse the outcome of the 77 cafe and restaurant employers that were part of the proactive compliance audit for the period between October 2019 and October 2020.

As there were high levels of non-compliance with employment obligations found during the proactive compliance campaign, the campaign will be continued and industrial inspectors will visit further cafes and restaurants over the next 12 months.

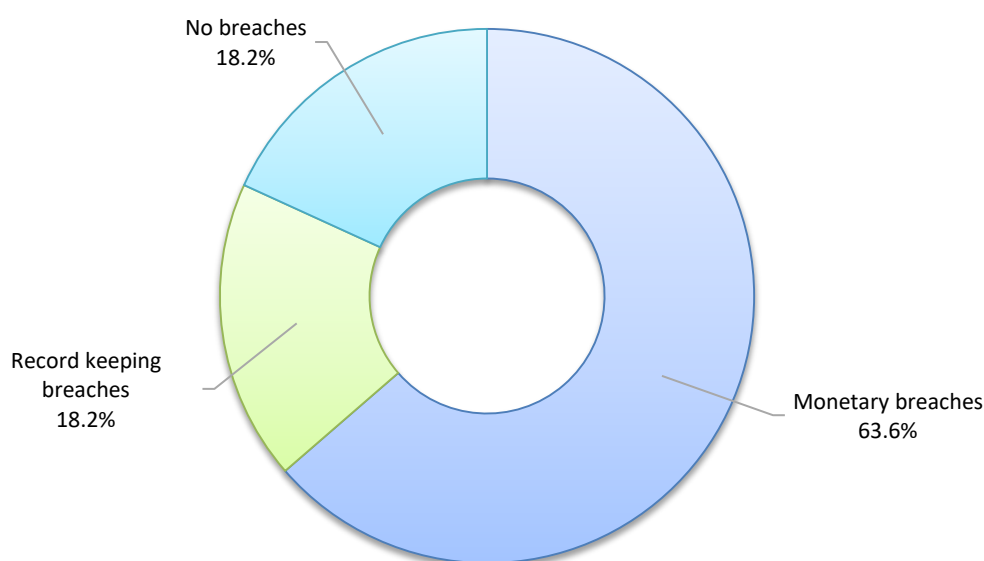
Campaign results

Of the 77 cafe and restaurant employing businesses inspected between 1 October 2019 and October 2020, **four in five businesses were found to be non-compliant with WA employment laws** (81.8% or 63 businesses). Such high levels of non-compliance in the cafe and restaurant sector is of significant concern and highlights the importance of regular proactive compliance campaigns in educating employers on their obligations and responsibilities and detecting non-compliance.

Of the 77 inspected businesses:

- 63.6% had monetary breaches which included the underpayment of wages, penalty rates and overtime rates;
- 18.2% solely had record keeping breaches;
- 18.2% were found to be fully compliant with state employment laws by paying their employees the correct minimum award rates of pay, as well as keeping up to date and accurate timesheet, roster and pay slip records.

Figure 1: Cafe and restaurant businesses by compliance outcome



Monetary breaches

As of October 2020, a total of \$348,889.69 in underpayments was identified for 369 employees working in 49 cafes and restaurants covered by the state system. Of this amount, \$186,133 has been recovered to 30 September 2020. The Department will continue to pursue the balance through voluntary rectification, formal investigation and court proceedings.

The majority of cafes and restaurants identified as having monetary breaches employed less than 10 employees and the identified underpayment amounts were less than \$5,000. There is however a significant outlier; a large restaurant employing more than 50 employees accounted for \$73,100 in underpayments. This business will be discussed in greater detail in Case Study 1.

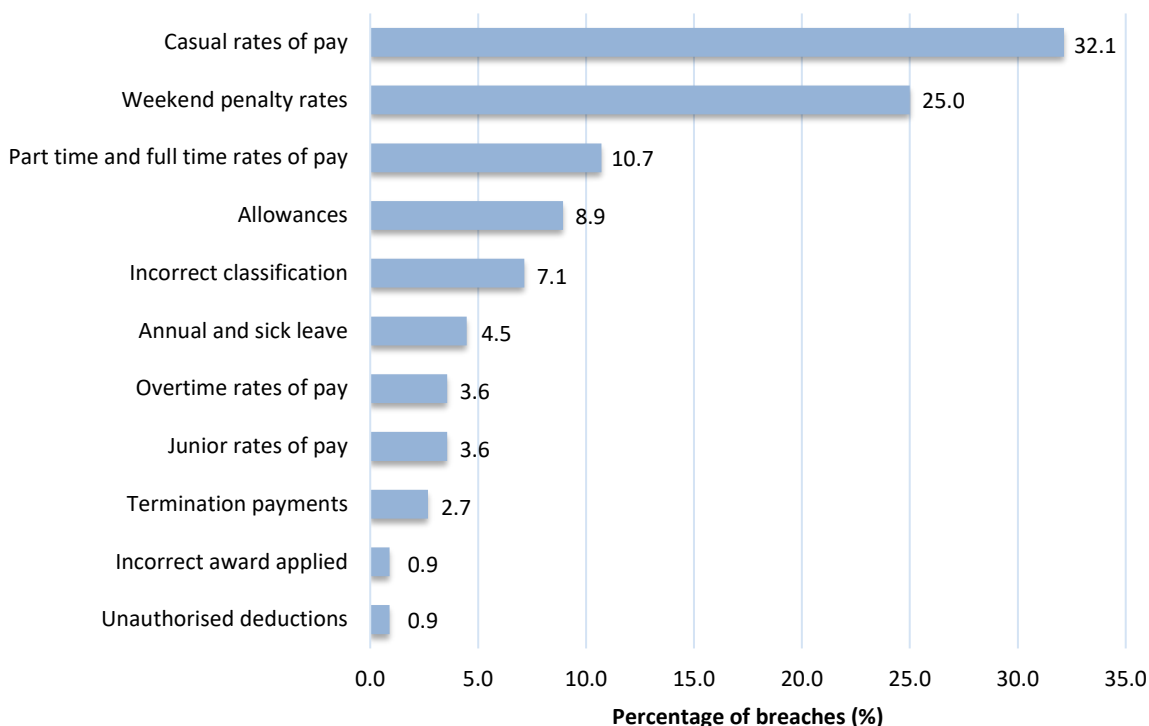
The largest recovered amount for a single employee was \$4,882 working for a restaurant in the Perth metropolitan area. The employer underpaid ordinary rates of pay by paying a flat hourly rate of \$20 per hour regardless of whether the full time employee worked weekdays or weekends. The employer also failed to make payments on termination for accrued annual leave.

The type of monetary breaches were analysed to determine what elements contributed to the identified underpayments. Multiple monetary breaches were identified for most of the inspected businesses.

As seen in Figure 2, the largest proportion of monetary breaches were the underpayment of:

- casual rates of pay (32.1%);
- weekend penalty rates (25.0%); and
- full time and part time rates of pay (10.7%).

Figure 2: Type of monetary breaches identified



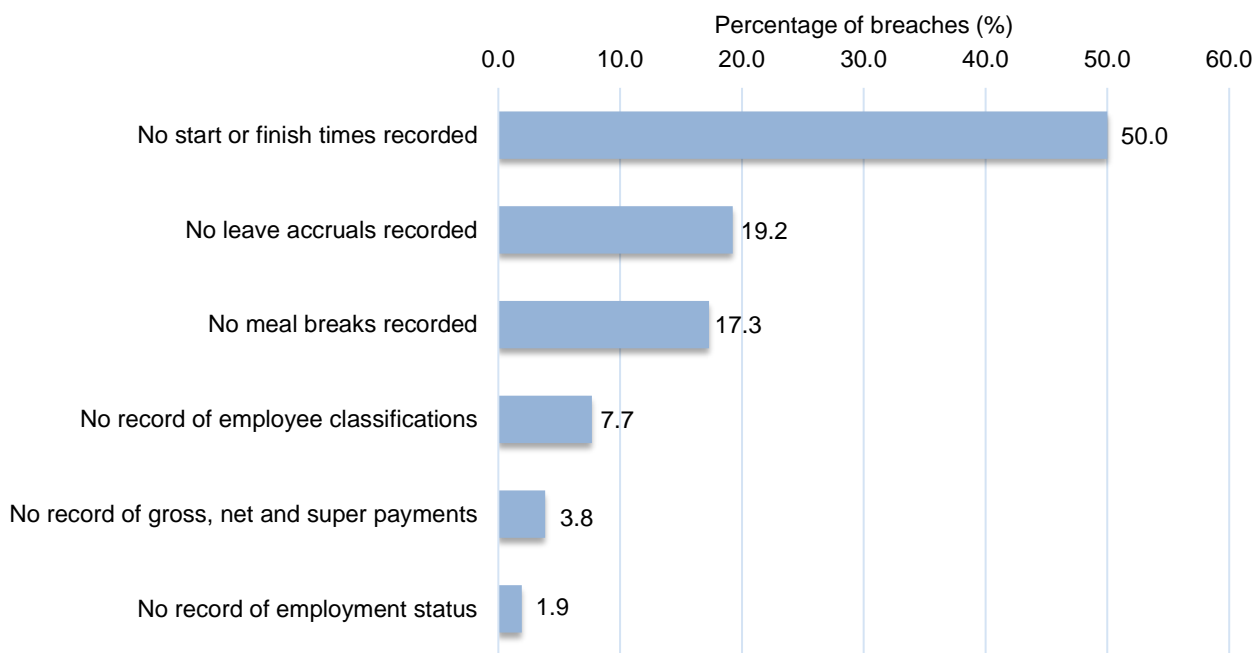
Many employers failed to pay casual employees the correct rate of pay, with a significant number paying a flat hourly rate of pay for all hours worked, disregarding the penalty rates of pay that apply for hours worked on weekends.

In terms of allowances, the majority of breaches involved the non-payment of a laundry allowance for employees who were provided with a special uniform that they were required to clean themselves. A split shift allowance was also regularly not paid by employers. The split shift allowance applies to full time and part time employees who work their ordinary hours in more than one shift during the day. For example, an employee who works from 10am to 2pm to cover the lunch period and then works the evening shift from 6pm to 9pm.

Record keeping breaches

Almost half of all cafe and restaurant businesses included in the compliance campaign had record keeping breaches (48.1%). Three-quarters of employers identified as having record keeping breaches also had monetary breaches. As seen in Figure 3, half of the record keeping breaches involved failure to record start or finish times (50%) while a further one in five employers failed to record annual or sick leave accruals (19.2%).

Figure 3: Type of record keeping breaches identified



Case study 1 – high profile restaurant employing more than 50 employees

The employers of a high profile restaurant were found to have underpaid 53 employees a total of around \$73,000 over a 12-month period. The initial inspection was converted to a formal investigation after the employers failed to rectify the underpayments identified during the inspection. By converting the inspection to a formal investigation, an industrial inspector could collect and examine all applicable evidence relating to the business and collect statements from the employers and employees.

The large amount of underpayments, the number of employees involved and the employment of overseas university students on student visas, made the investigation of this business a priority for the compliance team. The investigation identified that the majority of employees were paid below the applicable RTC Award rates of pay as a flat rate of pay was paid for all hours worked. For example, a Level 3 part time cook was underpaid \$2.24 per hour for hours worked Monday to Friday. The employer also failed to pay the penalty loading for hours worked after 7pm Monday to Friday.

Another example involved a casual junior employee, who was paid below junior rates of pay for ordinary hours worked. The employee was underpaid \$2.44 per hour as a 19-year old and \$5.30 per hour when they turned 20 years old. All employees who were identified as being underpaid were informed by the Department.

What made this case particularly problematic was the lack of record keeping, as timesheets and rosters were not available. Apart from the total number of hours recorded on employee pay slips, there were no records available for the hours employees worked on weekends or public holidays. The underpayment amounts could not therefore factor in weekend or public holiday penalties. As the restaurant was particularly busy on weekends and public holidays, the total underpayment amount would have been significantly higher if employees' weekend and public holiday hours had been recorded and ascertainable. There were also a few instances of unauthorised deductions with no explanation as to why, and many employees had their annual leave accrued hours adjusted with no evidence that employees had actually taken annual leave.

After meeting with the employers to discuss the investigation findings and their obligation to pay the minimum rates of pay under the RTC Award and comply with record keeping requirements, they agreed to back pay the employees the identified underpayments. Given the seriousness and number of breaches identified, this business will be inspected again in the next 12 months to ensure compliance with award rates of pay and record keeping requirements.

Case study 2 – popular cafe continued to underpay after audit

The proactive audit of a popular cafe identified that 18 casual employees and one full time salaried employee had been underpaid under the RTC Award. The total underpayment amount over a 14-month period was just under \$13,000. The casual employees were paid below minimum wages for weekday work, as well as weekend work. The Department was unable to ascertain whether any of the employees worked overtime as start and finish times were not provided.

The employer initially agreed to voluntarily rectify the identified underpayments, but to date has only back paid three of the affected employees. The Department contacted all of the affected employees informing them of the amount they had been underpaid. Many of the employees were migrant workers on temporary visas.

The Department is continuing to investigate, due to evidence that the employer continued to underpay employees after the Department's audit. This suggests the employer may have engaged in deliberate and systematic underpayments.