

11 January 2018

Mr Michael Pettersson MLA  
Chair, Standing Committee on Education, Employment and Youth Affairs  
GPO Box 1020,  
CANBERRA, ACT 2601  
Via email: committees@parliament.act.gov.au

Dear Mr Pettersson, *Michael*

I understand that the Committee has extended its reporting date for the Inquiry into Insecure Work to the last sitting day of February 2018.

Given this extended reporting date, I wish to draw the committee's attention to a December 2017 report by the Fair Work Ombudsman (FWO).

The report states:

*The Fair Work Ombudsman selected 80 businesses in the ACT region that had previously been found to be non-compliant with workplace laws and conducted follow-up audits to determine whether they had rectified their operations.*

*While 48 of the businesses (60 per cent) re-audited were found to be now fully compliant with workplace laws, 32 businesses (40 per cent) remained non-compliant.*

*The businesses were audited to see if they were paying workers correctly and whether they were meeting their record-keeping and pay slip obligations.*

*Audits found:*

- *16 businesses had breaches relating to pay rates;*
- *11 businesses had breaches relating to record-keeping and pay slips; and*
- *5 businesses had breaches relating to pay rates and record-keeping / pay slips.*

*Link: <https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/december-2017/20171219-act-compliance-monitoring-campaign-mr>*

This report demonstrates the extent of non-compliance with workplace laws.

During the inquiry, business lobby organisations and employers contested the fact that a large number of employers in the ACT did not comply with workplace laws. These business lobby groups have asserted that existing Commonwealth laws and penalties are sufficient in ensuring employers meet their legal obligations.

The results from the 2017 FWO demonstrate that this is not the case. To reiterate, the FWO selected businesses with a history of non-compliance. It found that forty percent had not "rectified their operations" – that is, two in five businesses continued to break the law despite previously being subject to enforcement action. There were 120 Canberran workers negatively impacted by this unlawful employer behaviour.

The only conclusion to be drawn when such a large number of employers to continue to be “non-compliant” with the law is that the existing laws are sufficient (as asserted by by employer lobby groups to the Inquiry).

Further, the consequence for these law-breaking businesses has been minimal. For those employers found to be underpaying their employees, the consequence is simply to repay the unpaid moneys. Some non-compliant employers were issued with letters of caution, infringement notices and one was issued with a compliance notice. The FWO has commenced only a single prosecution, related to employee records (pay slips).

In the UnionsACT submission, we asserted that lawless behaviour by employers in Canberra is widespread, and is a consequence of the integration of insecure work into business models. The unlawful behaviour of the Canberra businesses audited by the Fair Work Ombudsman do not represent isolated incidents.

Further, the UnionsACT submission highlighted the inadequate and insufficient regulatory regime at a Federal level. The response by the FWO to substantial levels of non-compliance is manifestly inadequate and provides no deterrent for other, similar law-breaking employers.

While the 2017 report does not state the industries of the non-compliant employers, they were selected from previously audited businesses in the retail, hairdressing and accommodation/food services sectors. These sectors have much higher than average numbers of employees aged under 25.

Having drawn this Fair Work Ombudsman report to the Committee’s attention, UnionsACT would like to reiterate several of the recommendations from our submission.

1. Create a certificate system for employers of 5 or more young workers. This recommendation would give the ACT Government greater understanding of the extent of compliance by employers of workplace and WHS laws. This would also allow the existing Child Protection regulator to act.
2. Establish an Office of Industrial Relations with inspection and enforcement powers: The resources of the FWO to enforce the Fair Work Act within the ACT are manifestly inadequate, and the ACT Government should establish its own inspectorate.

I would be happy to provide more information about these recommendations to the Committee at your request.

Yours sincerely



**Alex White**  
Secretary  
UnionsACT