



Australian Government

Fair Work

OMBUDSMAN

Queensland – Brisbane suburban food courts audit program

Report

About the Fair Work Ombudsman

The Fair Work Ombudsman is an independent statutory agency, created by the *Fair Work Act 2009* (the Act) on 1 July 2009.

Our vision is fair Australian workplaces, and our mission is to work with Australians to educate, promote fairness and ensure justice in the workplace. We promote harmonious, productive and cooperative workplace relations and ensure compliance with Australia's workplace laws, by:

- offering people a single point of contact for them to receive accurate and timely advice and information about Australia's workplace relations system
- educating people working in Australia about their workplace rights and obligations
- investigating complaints or suspected contraventions of workplace laws, awards and agreements
- litigating to enforce workplace laws and to deter people from not complying with their workplace responsibilities.

Education and compliance campaigns that focus on specific industries and/or regions are a proactive strategy we use to achieve compliance with national workplace laws. They are also effective in recovering employee entitlements, particularly when the campaign targets high-risk areas and industries that employ vulnerable workers.

This report covers the background, methodology and results of the Queensland – Brisbane suburban food courts audit program.

For further information and media enquiries please contact Ryan Pedler (ryan.pedler@fwo.gov.au) in the Fair Work Ombudsman's Media Unit.

If you would like further information about the Fair Work Ombudsman's campaigns please contact, Steve Ronson, Executive Director – Dispute Resolution and Compliance (steven.ronson@fwo.gov.au).

Summary

Beginning in November 2011 the Fair Work Ombudsman (FWO) conducted the Brisbane suburban food courts audit program (the program). We targeted fast food outlets operating in food courts of shopping centres in suburban Brisbane.

Fair Work Inspectors visited the targeted businesses and provided employers with information about their obligations under Australia's workplace laws. We also reviewed a sample of employee time and wage records to ensure compliance with the *Fair Work Act 2009* (the Act), the *Fair Work Regulations 2009* (the Regulations) and the *Fast Food Industry Award 2010* (the Award).

Of the 121 audits completed we found 54 (45%) employers compliant and 67 (55%) in contravention. We have recovered \$117,953 for 326 employees.

We are continuing investigations into four employers.

Background

Historically, we have received a significant number of complaints from employees in the fast food sector. An analysis of the complaints received during recent years showed that the takeaway food services sector had the second highest number of complaints of any sector in Queensland. Further, we found that in over 60% of complaints employees were under paid.

In 2010 FWO conducted the Queensland food court audit program in both the central business district of Brisbane and regional areas of Queensland. We audited takeaway food outlets in the food courts of shopping centres in those regions. The audit program resulted in over \$45,000 being recovered for nearly 180 employees. These results were a determining factor behind our decision to conduct a similar audit program in suburban Brisbane.

In addition, takeaway food businesses operating in food courts are in close proximity to their competitors. A business that does not honour their employer obligations by providing minimum entitlements to employees has an unfair advantage in the market place.

Aim & objectives

The aim of the program was to assist the targeted employers to better understand and comply with the requirements of the Act, the Regulations and the Award.

The specific objectives of the campaign were to:

- assess compliance with correct wage rates
- assess compliance with correct time and wage record-keeping and pay slip practices
- encourage employers to voluntarily correct of any contraventions identified
- provide employers with information about the many resources provided by FWO, including our online tools
- help towards creating a level playing field for fast food employers

The businesses we targeted in the program were fast food outlets operating in food courts, primarily in shopping centres located in the Brisbane suburban area.

We did not audit coffee shops, cafes, bars and restaurants providing primarily a sit down service inside the establishment, as these businesses are excluded from the provisions of the Award.

Methodology

During November 2011 we identified shopping centres located in the greater Brisbane area that have food courts.

We visited the selected shopping centres and spoke with employers of fast food outlets operating in the food courts. We discussed the program with employers and took the opportunity to provide them with information and resources to help ensure they were aware of their workplace obligations.

To facilitate our review of employer records we issued each selected business a formal request to provide us with a sample of employment records for a two week pay period. We asked employers to send their records to our office within 14 days of our request.

We assessed the employment records against the Award, National Employment Standards (NES) and record keeping regulations. Where we identified contraventions we contacted the employer to discuss the findings and to ensure that all contraventions were rectified.

All of the businesses we audited received written notification advising of the outcome.

Results

Statistical findings

The results of the program, as at 31 October 2012, are summarised in the table below.

Table 1: Audit Results	
Number of employers Audited (completed)	121
• <i>Employers compliant</i>	54 (45%)
• <i>Employers in contravention (voluntary compliance)</i>	67 (55%)
Total amount recovered	\$117,952.77
Number of employees paid	326

Contravention types

Of the 67 employers in contravention, 60 (90%) were identified as underpaying their staff.

For 42 of those employers, underpayments were their only contraventions. Eighteen employers recorded both underpayment and record keeping contraventions.

Seven employers recorded only record keeping contraventions.

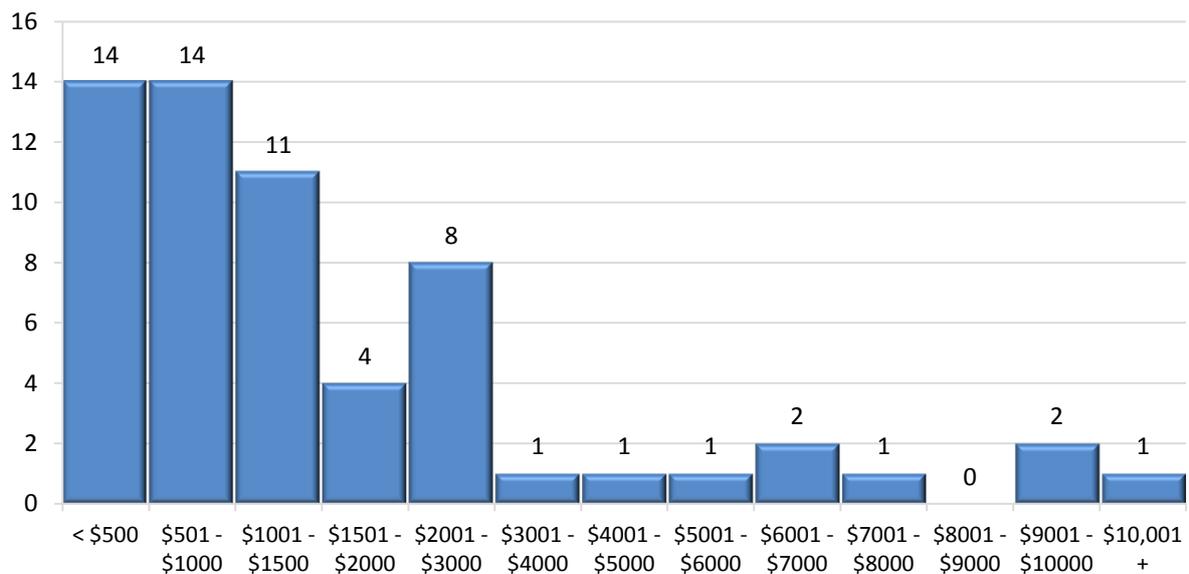
Recovery amounts

The average amount of money recovered from those employers with underpayments was \$1966.

Fifty one (85%) employers had underpayments totalling less than \$3000, while 28 (47%) had total underpayments less than \$1000.

Seven employers had total underpayments exceeding \$5000.

Figure 2 – Underpayment amounts – by segment



Other findings

The results of the program indicate a poor level of compliance, with over half of all businesses audited in contravention. Fair Work Inspectors who conducted the audits reported the following examples of the most common contraventions found:

- Incorrect classification of employees at a lower level than applicable for the duties they perform.
- Keeping employees on the introductory rate of pay beyond the three month period prescribed by the Award.
- Paying an unofficial industry rate or what some employers “thought was about right”. In one case, an employer paid employees \$20 per hour because it was a “round figure”, even though the most common applicable rate in the Award is \$20.32.
- Incorrect calculation of junior rates of pay, particularly in relation to phasing.
- Paying in accord with a collective agreement that contained pay rates below the prescribed rate of the Award.

- Failing to pay weekend penalty rates.

CASE STUDY

We received time and wage records from an employer we had visited. A Fair Work Inspector (FWI) assessed the records and identified underpayments relating to adult and junior casual ordinary rates. The FWI also noted that the name of the superannuation fund was not included on pay slips.

The FWI phoned the employer to explain the audit findings and the employer expressed surprise at being told of the underpayments, as he had increased wage rates in May 2011. The FWI advised that wages usually increased on the first pay period after 1 July each year. As the employer had not increased wages since May 2011, he had failed to increase the rates in accord with the increase of July 2011.

In addition to discussing the underpayments identified, the FWI advised the employer of the requirement to have details of superannuation funds on pay slips.

We issued the employer with a formal letter outlining our findings and the action required to rectify the contraventions identified. In responding, the employer advised us of his difficulty in calculating junior rates of pay and weekend penalty rates. A FWI assisted the employer in calculating the correct rates of pay, including referring the employer to tools on our website and explaining how to use these.

As a result, we recovered \$2532 for six employees. The employer is now familiar with his obligations and with our online resources, which will assist him to remain compliant into the future.

Conclusion

The results of the program demonstrate the importance of FWO conducting such activity. The high rate of monetary contraventions and the large amounts of money recovered for employees who were under paid show that many employers are not meeting their obligations.

We found that many of the employers audited had limited awareness about the minimum entitlements owed to their employees. This appeared to be the main reason for businesses being in contravention. This finding clearly indicates the need for ongoing educational and compliance activity in this sector.

FWO has recently commenced the national hospitality campaign, in which we will focus on several sectors in the hospitality industry, including takeaway food outlets.

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