

# National Insulation Installers Audit Program

Final report – November 2010



Australian Government

**Fair Work**  
OMBUDSMAN

## Summary

The Fair Work Ombudsman conducted the National Insulation Installers Audit Program in response to concerns raised by the Construction, Forestry, Mining and Energy Union (CFMEU), complaints from employees in the industry, the suspension of the Australian Government's Home Insulation Program, and significant media attention surrounding the industry.

The audit program commenced in April 2010 with a mass email distribution to 7396 enterprises registered in the Home Insulation Program with the Department of Climate Change and Energy Efficiency. Enterprises were then given time to utilise the self-help tools and fact sheets available from [www.fairwork.gov.au/insulation](http://www.fairwork.gov.au/insulation)

The audit program took place after the suspension of the Home Insulation Program. There were 230 enterprises audited to ensure compliance with payslip and record keeping requirements and correct payment of wages and conditions. In direct response to allegations raised regarding industry practices, the program also assessed the nature and status of contract for service relationships where applicable.

Of the 211 audits finalised from this campaign 58 employers (27.5%) were found to be non-compliant with Australian workplace laws:

- 33 contraventions were technical contraventions relating to record keeping and payslip requirements
- 21 contraventions were related to underpayment of wages and other allowances
- 4 businesses had both technical contraventions and underpayments.

The majority of employers were found to be compliant with their obligations under Australian workplace laws. In those matters involving contraventions, businesses voluntarily complied with Fair Work Inspectors to rectify identified contraventions. As at 30 September 2010, \$48 521 has been recovered for 79 employees.

To date the audit program has found no evidence of sham contracting. However, the Fair Work Ombudsman is involved in two ongoing investigations concerning purported contract for services arrangements.

## Background

In February 2010, the Fair Work Ombudsman received a representation from the National Secretary of the CFMEU concerning employment practices of home insulation installers, particularly the prevalence of sham contracting arrangements.

At the same time, media reports indicated the cessation of the Home Insulation Program had caused financial hardship in the sector, and there was an apparent increase in enquiries and complaints received by the Fair Work Ombudsman.

Monitoring of complaints from the beginning of the 2009–10 financial year identified 30 complaints received between November 2009 and February 2010 in relation to insulation installers, a significant increase from just eight complaints received from July 2009 to October 2009.

Similarly, the Fair Work Infoline identified 417 enquiries received from July 2009 to February 2010 related to insulation, nearly double the total insulation related calls received in 2008–2009.

Accordingly, Fair Work Ombudsman determined it was appropriate to conduct a national audit program to determine the level of compliance within the industry. During the planning stage of the program in March 2010, the Fair Work Ombudsman received the most insulation related activity; 39 complaints and 92 Fair Work Infoline enquiries.

## Program aim and objectives

It was proposed that entities which had claimed rebates as part of the Home Insulation Program would be targeted to:

- determine the industry's level of compliance with the *Fair Work Act 2009*, the *Fair Work Regulations*, and the applicable industrial instruments
- assess the level of bogus contracting that may exist in this industry.

## Stakeholders

The Fair Work Ombudsman attempted to contact all of the industry stakeholders listed in Appendix B of this report. These stakeholders were identified through an analysis of insulation installer industry related media, including Hansard publications.

Despite attempted telephone and email contact with the stakeholders, only the Australian Cellulose Insulation Manufacturers' Association responded to our requests for information.

Our state partner agency, the Queensland Department of Justice and Attorney-General, consulted with the Queensland Electrical Safety Office. Through this engagement the Fair Work Ombudsman obtained a list of insulation installers in Queensland.

## Methodology

Through interactions with the Department of Climate Change and Energy Efficiency (DCCEE), the Fair Work Ombudsman identified 7396 employer entities in the insulation installer industry. With the exception of businesses that had current investigations underway, in April 2010 an email was delivered to 7134 enterprises registered in the Home Insulation Program alerting them to the upcoming audits. The email provided access to information on their employer workplace obligations through a direct link to [www.fairwork.gov.au/insulation](http://www.fairwork.gov.au/insulation)

The list provided by the DCCEE was reconciled with the list provided by the Queensland Electrical Safety Office to ensure list accuracy and completeness.

Following the initial notification to employers of the audit program, 591 entities were formally requested to provide records to be examined by Fair Work Inspectors.

Fair Work Inspectors predominantly used an office-based audit methodology, though field based visits were adopted when records were not returned or where a field visit was necessary for further evidence assessment.

Time and wage records, pay slip records and wage entitlements were examined against the relevant industrial instrument, the Fair Work Act, and the Fair Work Regulations.

In the event of minor contraventions, employers were asked to voluntarily rectify the contravention. If required, audits proceeded to formal investigations.

Where the records identified contracting relationships, Fair Work Inspectors held discussions with the parties to establish the nature and status of contract for service relationships.

## Audit program results

The following table provides an overview of the key results of this campaign.

<b>Status of audits</b>	
No of entities targeted for audit	591
Not audited (no employees, unable to contact, no longer trading)	361
Audits finalised:	211
• compliant	153 (72.5%)
• non-compliant	58 (27.5%)
Audits not yet finalised	19
<b>Recoveries</b>	
Money recovered	\$48 521
Number of employees paid	79

**Case study: ensuring deregistered employers have complied with Australian workplace relations laws**

Operator A is a constitutional corporation that received rebates for insulation installations.

Operator A was selected for auditing in the Insulation Installers Audit Program. Operator A was able to produce employment records for the audit period; however, they notified us they were no longer installing insulation.

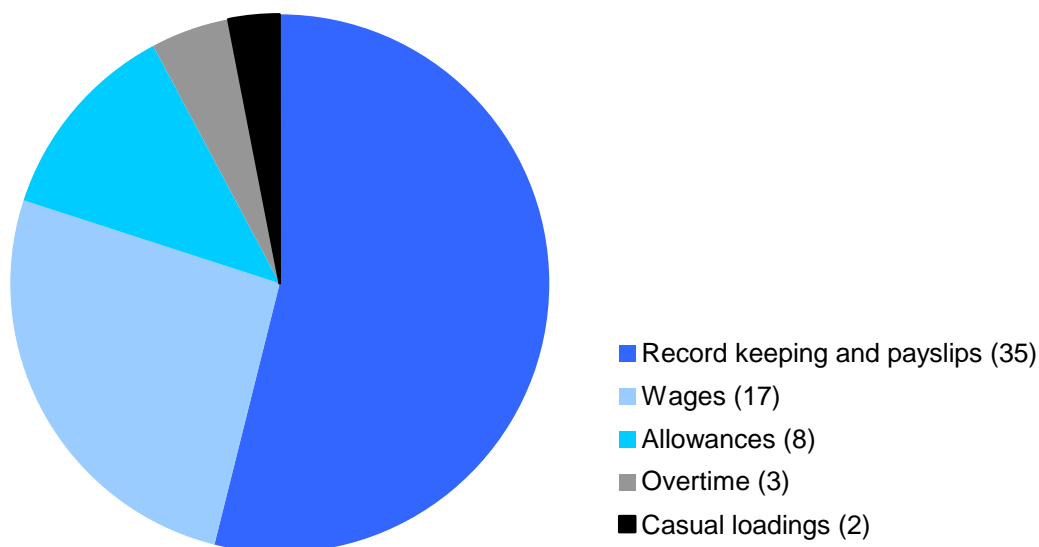
Operator A identified they were previously covered by the *Building and Construction Industry (Northern Territory) Award 2002* but were in the process of transitioning to the *Building and Construction General On-Site Award 2010*.

The audit identified that Operator A was paying equal to, or above, the required minimum entitlements. Concerns were raised with Operator A about the content of their payslips.

Operator A signed a compliance agreement form committing them to amend their payslips to comply with the *Fair Work Regulations 2009*.

**Contraventions identified**

Fifty eight (58) employers were found to be non-compliant which resulted in a total of 62 contraventions. The breakdown of these 62 contraventions are summarised in the chart below.



## Email distribution results

The initial email was distributed to 7396 email addresses. The results are below.

	Number	Percentage of total sent	Industry standard*
Total emails distributed	7396	100.0%	
Emails that could not be delivered	262	3.5%	6.6%
Unique opens	4112	55.6%	26.5%
Unique click throughs	2340	31.6%	5.4%

\* Industry standards provided by vendor

## Comments on the findings

The audit program publicly commenced in April 2010 with a mass email distribution to 7396 enterprises registered on the Home Insulation Program. The results of the email distribution were significantly higher than industry standards, with over 55% of recipients opening the email and over 31% of recipients clicking through [www.fairwork.gov.au/insulation](http://www.fairwork.gov.au/insulation)

The program targeted 591 enterprises, however 361 of entities selected (61%) were unable to be audited. The reasons these entities were not suitable were:

- 284 had no employees
- 47 were unable to be contacted
- 29 were no longer trading.

### Case study: entity unable to be audited

Operator B is a constitutional corporation that received rebates for insulation installations.

Operator B was selected for auditing in the National Insulation Installers Audit program as a deregistered installer. Fair Work Inspectors visited Operator B to discuss the audit program and were advised that he no longer worked in the insulation industry.

Further discussions with Operator B revealed he did not employ any employees or engage any contractors when installing insulation.

The audit program took place after the suspension of the Home Insulation Program. The high number of businesses that were not suitable for audit suggests the insulation installation industry may have contained a significant number of non-employing entities prior to the cessation of the Home Insulation Program.

The representation received from the CFMEU highlighted a particular company it alleged was contravening Australian workplace laws. Fair Work Inspectors from Victoria are continuing their investigation of this business and the allegations relating to the exploitation of vulnerable overseas workers.

An objective of this audit program was to investigate whether purported contract for service agreements were legitimate arrangements. In undertaking this task, Fair Work Inspectors asked questions of the business owners and sought evidence to confirm the existence of valid contract for service agreements.

**Case study: entity engaging contractors**

Operator C is a constitutional corporation that received rebates for insulation installations.

Operator C was selected for auditing in the Insulation Installers Audit Program as a registered installer. Fair Work Inspectors visited Operator C to discuss the audit program and were advised that they did not employ any employees for insulation installations.

Operator C advised they engaged labour hire companies or hired contractors if they required staff to complete the insulation installations.

Fair Work Inspectors talked to Operator C about the contracts for service they offered and examined documentary evidence provided by Operator C. This documentary evidence supported the validity of the contracts for service offered by Operator C.

In one case where the documentary evidence was not sufficient, Fair Work Inspectors talked to the contractor about the nature and status of his contract for service relationship. From this discussion, Fair Work Inspectors were able to conclude that the contractor and Operator C had a valid contract for service on the basis of the Fair Work Ombudsman assessment against the Contractor Vs Employee the multi-factor test.

While no evidence of sham contracting arrangements was found in the audits finalised to date, there remain two ongoing investigations.

**Case study: potential sham contracting**

Operator D engaged insulation installation contractors. Preliminary assessment of Operator D's records raised concerns about the contract for service arrangements.

As per standard investigation procedures, Fair Work Inspectors undertook the Employee Vs Contractor multi-factor test which is required to make a determination.

Operator D continues to trade but it no longer operates in the insulation industry or employs the same staff.

In Queensland, where the majority of audits were completed, 31.9% of employers audited had contravened Commonwealth workplace laws. The rate of non-compliance in the other states and territories was 18%. Further, of the 25 employers found to have contraventions relating to underpayments, 24 were from Queensland.

### **Case study: employer contravening minimum hourly rates of pay**

Operator E was selected for auditing in the Insulation Installers Audit Program. The audit revealed that Operator E was underpaying his employees their minimum hourly rate as prescribed by the *Building and Construction General On-Site Award 2010*.

Prior to 1 January 2010, there was no award in Queensland that applied to insulation installers, only the APSC Standard and Federal Minimum Wage. This changed however, with the introduction of modern awards on 1 January 2010. From 1 January 2010, Operator E mistakenly commenced to pay his employees as per the *Miscellaneous Award 2010*. The correct award that applies to Operator E is the *Building and Construction General On-Site Award 2010*. As a result, Operator E had underpaid his employees from 1 January 2010.

The Fair Work Ombudsman advised Operator E of the contravention and provided information as to why the *Building and Construction General On-Site Award 2010* would apply and not the *Miscellaneous Award 2010*.

Operator E voluntarily rectified the contravention, back paying 12 employees, including two young employees, a total of \$16 423.74

## **Conclusion**

The high number of businesses that could not be audited may be in part attributable to the audit program being conducted after the Home Insulation Program had been suspended, namely, the program disclosed a significant number of businesses with no employees. Of the audits finalised thus far, no evidence of sham contracting arrangements was discovered in the industry.

The audit program strategy was to target a much larger number of businesses in Queensland. The rate of non-compliance and the monies recovered in Queensland suggests this was an appropriate audit strategy.

The majority of employers were compliant with their workplace obligations. The contraventions identified were predominantly technical record keeping and payslip issues.

The results of this audit program are unlikely to warrant any future targeting work in the insulation industry, particularly given the high number of businesses that were unsuitable for audit and the lack of evidence of any sham contracting arrangements.



## **Appendix A – Industrial instruments**

Listed below are the industrial instruments used in the National Insulation Installers Audit Program.

### **Modern awards**

*Building and Construction General On-Site Award 2010* [MA000020]

*Manufacturing and Associated Industries and Occupations Award 2010* [MA000010]  
(instances where the employer manufactures and installs insulation)

*Commercial Sales Award 2010* [MA000083] (for door-to-door signup sales work)

### **Pre-modern awards**

*Building and Construction Industry (Northern Territory) Award 2002* [AP812941]

*National Building and Construction Industry Award 2000* [AP790741]

*Building Trades Award (Tasmania)* [AN170011]

*Commercial Sales (Victoria) Award 1999* [AP772632]

*Property and Business Services Industry Sector Minimum Wage Order - Victoria - 1997*  
[AP793164]

*Clerical and Administrative Employees (State) Award* [AN120664]

*Building Employees Mixed Industries (State) Award* [AN120091]

*Building and Construction Industry (State) Award* [AN120089]

## **Appendix B – Stakeholders**

Aluminium Foil Insulation Association Inc (AFIA)

Australian Cellulose Insulation Manufacturers' Association (ACIMA)

Housing Industry Association (HIA)

Insulation Council of Australia and New Zealand (ICANZ)

Polyester Insulation Manufacturers Association of Australia (PIMAA)

South Australian Office of Consumer and Business Affairs, Builders Licensing Section

The Insulation Contractors Association of Australia (TICA)

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