



Australian Government

# Fair Work OMBUDSMAN

## Victorian Rolling Monthly Campaign 2010-2011 Japanese Restaurants, Asian Groceries, Holmesglen- Final Report

### Summary

In August 2010, the Fair Work Ombudsman (FWO) completed an audit program of Japanese restaurants and Asian grocery stores in the Melbourne CBD and of businesses nearby Holmesglen station. These audits were part of the Victorian Rolling Monthly Campaign where different geographical regions and industries have been visited and audited each month. The selection of these businesses were a result of intelligence received by FWO that employees working in Japanese restaurants and Asian grocery stores were not receiving their correct entitlements and that some businesses near Holmesglen Station were not complying with their workplace obligations.

As at 14 June 2011, 24(75%) of the 32 employers who had their audit finalised, were found to be in contravention. The majority of contraventions related to underpayment of base rates and non payment of public holiday, weekend and/or night loadings.

We found that the contraventions mainly arose as a result of employers being unaware of their obligations under Commonwealth workplace laws rather than a deliberate attempt by employers to avoid their obligations. Of concern was the number of payroll professionals, book keepers and accountants, engaged by the businesses who were not aware of the employer's workplace obligations.

A total of \$151,543 has been recovered for 134 employees, some of which are international students.

Detailed audit program findings can be found below.

### Background

Over the past two years the Victorian Rolling Monthly Campaign has been successful in implementing compliance activities in a variety of industries and geographical regions across Victoria. The campaign has provided an opportunity to reach different industries and communities, to educate and assess compliance with workplace laws.

In recent times the FWO has received numerous 'tip offs' concerning the businesses in the Holmesglen Station area and Japanese Restaurants and Asian grocery stores. The intelligence received indicated that certain businesses may be underpaying staff. Recognising that a number of Japanese restaurants and Asian grocery stores employ Asian nationals and international students, employees FWO considers to be vulnerable, FWO implemented the audit.

## **Campaign aim & objectives**

The aim of the Victorian Monthly Rolling Campaign has been to target a geographical area with a concentration of small businesses each month to ensure compliance with the *Fair Work Act (Act)*, *Fair Work Regulations (Regulations)* and an employer's relevant industrial instrument. The specific objectives of the Japanese restaurant, Asian grocery stores and Holmesglen area audit were to;

- educate small business operators and improve compliance with record keeping and pay slip obligations
- assess rates of pay as per the relevant industrial instrument
- provide modern award transition advice to employers
- promote the FWO small business aids/templates
- increase FWO's visible presence in selected areas and industries
- ensure compliance with Commonwealth workplace legislation

## **Methodology**

The selection of businesses audited was mainly based on the intelligence we received regarding the non compliance of some Japanese restaurants, Asian grocery businesses, and non compliance in the Holmesglen Station area. We supplemented this list of employers with information from the White Pages.

We adopted two different audit methodologies for the audit program. Some employers were sent an audit notification letter, which outlined the employment records they were required to send to us for assessment. Other employers were visited by Fair Work Inspectors (FWIs) without prior warning and requested to provide their employment records for assessment onsite. In some cases, employees and employers were interviewed during these field visits. Where records were not available for assessment, FWIs issued employers with a statutory notice formally requesting the documents.

Once the assessment of records was complete we provided each employer with written notification of the outcome of their audit. Where contraventions were identified we worked with employers to voluntarily rectify the contravention.

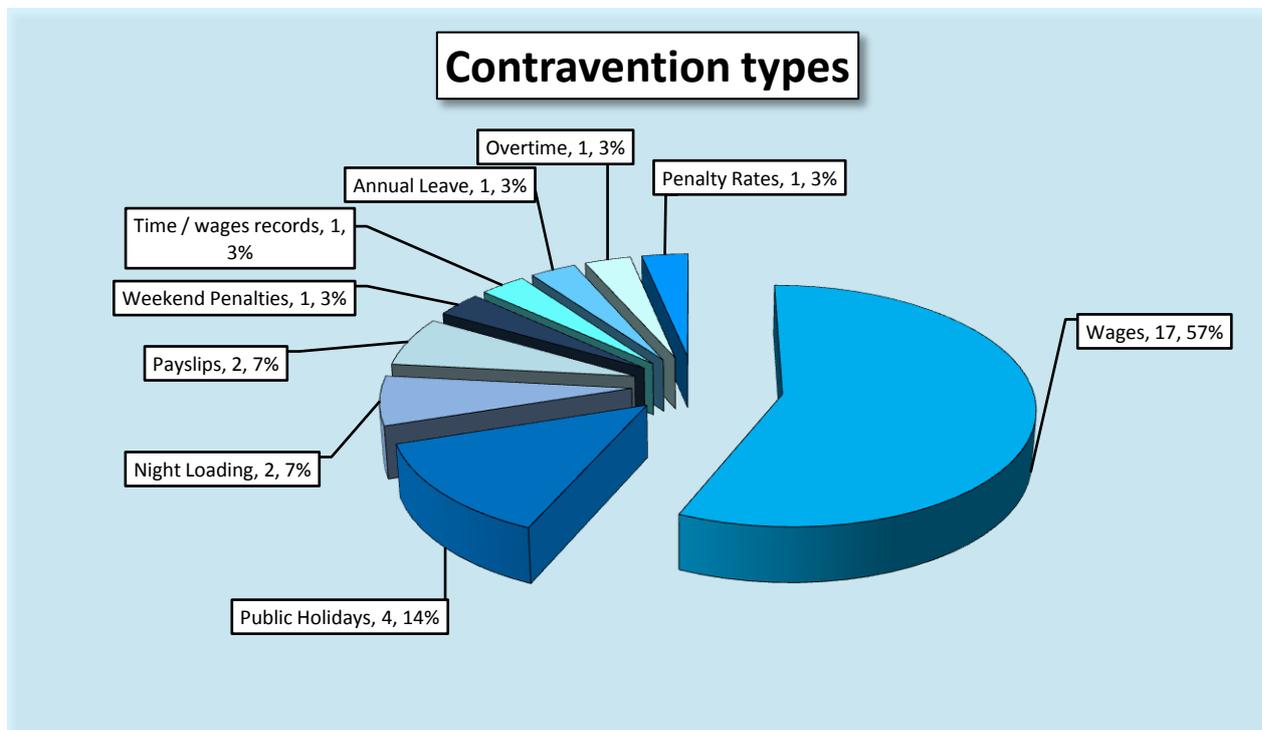
## **Results**

As at 14 June 2011, when the results of this audit program were compiled, we had commenced 44 audits, 32 of which have been finalised and 12 which are subject to further investigations.

Of the 32 completed audits we have found 8 employers to be compliant and 24 employers to be in contravention. We have recovered \$151,543 on behalf of 134 employees.

Results of Audits – Japanese Restaurants, Asian Groceries, Holmesglen as at 14 <sup>th</sup> June 2011	
Number of employers finalised	32
<ul style="list-style-type: none"> <li>Employers compliant</li> </ul>	8 (25%)
<ul style="list-style-type: none"> <li>Employers in contravention (voluntary compliance)</li> </ul>	24 (75%)
Number of audits ongoing	12
Total amount recovered	\$151,543
Number of employees paid	134

A total of 30 contraventions have been identified from the 24 employers found to have contravention/s. The types of contraventions identified are summarised in the chart below.



## Other Findings

The results of this audit program indicate a low level of compliance amongst the Japanese Restaurants, Asian grocers and Holmesglen employers audited. In the majority of cases the contraventions did not arise as a result of deliberate non compliance rather, due to a lack of awareness of obligations and entitlements as per the legislation. Of most concern is the level of monetary contraventions, and the amount recovered. It was evident that employers were not aware of minimum hourly rates nor loadings and penalties as prescribed by the relevant industrial instrument.

Some employers in contravention indicated that they used the services of book keepers and accountants to undertake their payroll activities. Of concern is the fact that we

found some of these accountants and book keepers to be unaware of the employer's obligations under the legislation and industrial instrument. For example, one accountant was not aware of what the minimum rate of pay was under the applicable instrument.

We identified that some employers were unaware of the difference between part time and casual employment. Consequently, in some cases employees did not receive their correct entitlements.

As suspected, we found many of the employers employed international students. In cases where we identified underpayment contraventions and the employee had returned back to their home country we forwarded their cheque for outstanding entitlements to the Director of Public Monies.

## **Conclusion**

This audit program has highlighted that there are a number of employers, book keepers and accountants who are not aware of obligations under the legislation.

The number of contraventions identified and the amount of money recovered reinforces the fact that FWO needs to continue to work with employers to assist them understand their obligations.

Overall, this audit program has been extremely successful as we have been able to educate numerous employers who were unaware of the fact that they had obligations under Australian workplace laws.

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